

*United States Court of Appeals  
for the Second Circuit*



**SUPPLEMENTAL  
APPENDIX**



**76-7062**

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UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

B

MARIA NURSE, et al.,

Plaintiffs-Appellants,

P/S

DARLENE K. WILLIS, individually and on behalf  
of all others similarly situated,

Plaintiff-Intervenor,

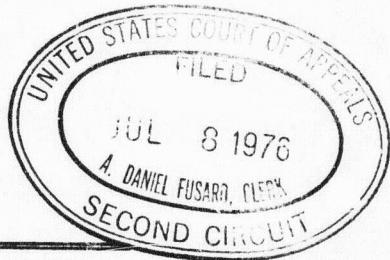
-against-

ALLIED MAINTENANCE CORPORATION, et al.,

Defendants.

SHEA GOULD CLIMENKO KRAMER & CASEY,

Appellants.



**SUPPLEMENTAL APPENDIX**

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incorrectly identified as a transcript of proceedings in  
Nurse v. Allied Maintenance Corp., 74 Civ. 4889 (CES).  
They occurred in Willis v. Allied Maintenance Corp.,  
75 Civ. 955 (CES).

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

MARIA NURSE, et al.,

Plaintiffs,

and

: 74 Civ. 4839

DARLENE K. WILLIS, individually and  
on behalf of all others similarly  
situated,

Plaintiff-Intervenor,

-against-

ALLIED MAINTENANCE CORPORATION,  
et al.,

Defendants.

M E M O R A N D U M

STEWART, DISTRICT JUDGE:

This memorandum supplements our order of February 18, 1976 disqualifying the law firm of Shea Gould Climenko Kramer & Casey ("Shea Gould") from representing plaintiffs in this action. Shea Gould appealed our order and on February 24, 1976, the Court of Appeals remanded the case "for [the] limited purpose of adducing additional proof on the issue of disqualification."

After the case was remanded, Shea Gould moved for an order of recusal and also asked that the February 18, 1976 disqualification order be vacated as moot. This court denied both applications and proceeded with its mandate from the Court of

Appeals to hold hearings on the question of the disqualification. Testimony was taken on March 5, 11 and 12, and counsel for all parties in the case were invited to participate as amici curiae. See Order, March 2, 1976.

1. Recusal.

By letter dated March 1, 1976, Hilton Gould, a partner in the Shea Gould firm, asked that this case be assigned to another judge. The reason given for the request was that the court had "already expressed an unequivocal and firm opinion on the merits of this matter...." We construed the letter as a motion seeking recusal and denied that motion in a memorandum decision dated March 1, 1976. Thereafter, on March 5, 1976, at the hearing scheduled to take further evidence on the disqualification issue, Shea Gould presented the court with an affidavit [the "Shelton" affidavit] seeking to disqualify this court pursuant to 28 U.S.C. §144 on grounds of personal bias or prejudice.

§144 provides in relevant part:

Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.

Shea Gould took the position that, for purposes of §144, it was not this court's "province to make the determination as to

whether or not the affidavit is or is not sufficient."

(Tr. at 19, March 5, 1976). We cannot agree. It is the province of the judge before whom the application is made to determine both the timeliness of the affidavit and its legal sufficiency. See Hodgesen v. Higher Education Ass'n, 444 F.2d 1344 (3d Cir. 1971); Emrich v. Bd. of Corrections, 505 F.2d 112 (5th Cir. 1974) opinion withdrawn 509 F.2d 440 (5th Cir. 1975); E.I. du Pont de Nemours & Co. v. Alvarez, 451 F.2d 843 (5th Cir. 1971); Hill v. Anderson, 442 F.2d 856 (8th Cir. 1970); Hill v. Turkeff, 391 F. Supp. 277 (D. Okla. 1975). While a judge must accept as true all allegations made in a §144 affidavit, see, e.g., Hodgesen v. Higher Education Union, 444 F.2d 1344 (3d Cir. 1971); Non-Preliminary Intentional Offense Committed v. FBI, 507 F.2d 1281 (8th Cir. 1974); Emrich v. Bd. of Corrections, 505 F.2d 112 (5th Cir. 1974), the mere filing of an affidavit does not automatically disqualify a judge.

See, e.g., U.S. v. Tsengene, 478 F.2d 1072 (3d Cir. 1973); Undersea Engineering & Constr. Co. v. FBI, 409 F.2d 543 (5th Cir. 1970); U.S. v. Mitchell, 377 F. Supp. 1312 (D. D.C. 1974).

For an affidavit to be sufficient for purposes of prompting recusal under 28 U.S.C. §144, it must allege bias which is personal and not judicial in nature. See, e.g., Wolfson v. Palmenti, 396 F.2d 121 (2d Cir. 1968); U.S. v. Falzone, 505 F.2d 478 (3d Cir. 1974) cert. granted 420 U.S. 955 (1975); Oliver v. Michigan Materials Co., 508 F.2d 178 (6th Cir. 1974) cert. denied 421 U.S. 963 (1975); Hill v. Turkeff, 391 F. Supp. 237

(D. Okla. 1975). The Shelton affidavit does not allege any personal bias, but merely reiterates the reason given in the Gould letter of March 1, namely that the court's order disqualifying Shea Gould precluded us from sitting on later stages of the case. We cannot find this argument sufficient for purposes of recusal or disqualification under §144, since an adverse judicial ruling in a case is not itself sufficient to exhibit personal bias or prejudice. Day v. Bd. of School Com'rs, 517 F.2d 1044 (5th Cir. 1975) appeal pending, No. 75-1084; Wounded Knee Legal Defense v. FBI, 507 F.2d 1281 (8th Cir. 1974); U.S. v. English, 501 F.2d 1254 (7th Cir. 1974); U.S. v. Roen-Alvarez, 451 F.2d 843 (5th Cir. 1971); U.S. v. Anderson, 433 F.2d 856 (8th Cir. 1970); Botts v. U.S., 413 F.2d 41 (9th Cir. 1969); Ianofsky v. Somerset Bus. Co., 389 F. Supp. 1041 (S.D.N.Y. 1975); Pumpus v. Uniroyal Tire Co., 385 F. Supp. 711 (D. Pa. 1974).

Turning to the other allegations of bias contained in the Shelton affidavit, we find a statement that the court did not respond to the Gould letter (Aff. ¶¶3-4). Again, accepting the allegation as true, a four day delay in responding to a letter is an allegation judicial in nature and not an allegation of personal bias under §144.

Finally, the affiant, Shelton, states that he was told by another member of the Shea Gould firm that some unnamed

third party was advised by a second unnamed person "that Judge Stewart did not want William C. Finneran, Jr. [a member of Shea Gould]...to be seated at counsel table...." (Aff., ¶ 50.

§144 provides that "the affidavit shall state the facts and the reasons for the belief that bias or prejudice exists." This provision guards against frivolous attacks. Hodgson v. Liquor Salesmen's Union, 444 F.2d 1344, 1349 (2d Cir. 1971). Therefore, "the identifying facts of time, place, persons, occasion and circumstances must be set forth with at least that degree of particularity one would expect to find in a bill of particulars....[E]re rumors and gossip are not enough." U.S. v. Mitchell, 377 F. Supp. 1312, 1316 (D. D.C. 1974) (citations omitted). See Brown v. U.S., 255 U.S. 22, 34 (1931); Hall v. Burkett, 391 F. Supp. 237 (D. Okla. 1975).

We have determined that paragraph 5 of the Shelton affidavit, is not an adequate statement of fact to meet the sufficiency requirement of §144 as it is based entirely upon hearsay. See Hodgson v. Liquor Salesmen's Union, 444 F.2d 1344, 1349 (2d Cir. 1971). We also note that even if we

1/ The fact that I did not advise anyone that I did not want Mr. Finneran to be seated at counsel table is not relevant to the issue of the sufficiency of the affidavit.

were to accept the affidavit as an adequate statement of fact, we would not find that it reveals a personal bias of this court against the law firm of Sher Gould.

2. Mootness.

This case was referred to us on February 24, 1976. On February 27, 1975, this case and all of the related industry-wide cases were settled. The February 27 settlement date was fixed prior to the appeal of the disqualification order. In clear contemplation of an argument upon remand that the issue had become moot, the order from the Second Circuit stated that the appeal "is continued without prejudice to the rights of any of the parties to assert the disqualification as pertains to attorney fees or any other portions of the case." We find that the issue of payment of attorney's fees prevents any finding of mootness and distinguishes the posture of this case from the recent case of Grant v. Haines, slip op. 2529 (2d Cir. March 9, 1976). The terms of the settlement agreement entered into on February 27, 1976 provide for separate court approval of a provision by which defendants agree to pay attorney's fees and costs to plaintiffs' counsel. The amount specified is \$300,000. Since the agreement provides for specific court approval of the payment of attorney's fees, it will be necessary for the court to evaluate the services rendered. cc. City of Detroit

v. Grinnell Corp., 491 F.2d 448 (2d Cir. 1974). As we have been charged by the parties in their settlement with the task of assessing whether the amount allocated as attorney's fees is proper, we must look, for example, to the time spent by counsel as an advocate for its clients. If Shea Gould was in a position of conflict we will have to determine whether the hours for which payment is sought reflects work on behalf of plaintiffs or on behalf of the third party defendant Union. While we note that the remedy of actual disqualification for a conflict of interest, if it had not already been effected, might not be necessary at this stage, the findings concerning whether a conflict existed during the period when services were allegedly rendered by Shea Gould to plaintiffs is most relevant to the court's task of approving the payment of attorney's fees.<sup>2/</sup>

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2/ We note that an additional question exists which relates to the issue of mootness. Plaintiffs in all the related equal pay actions, of which the instant action is one, are represented by Shea Gould and have agreed to pay Shea Gould as attorney's fees 25% of the amount recovered. (See plaintiffs' Ex. 4, Consent to Sue forms, which further provide "[i]f the Court... renders a judgment in which there is included an allowance of counsel fees to...Shea Gould...this amount...shall be applied in diminution of the aforesaid attorney's fees.") Since Shea Gould is now in a position to claim that percentage of the settlement amount from their clients, the potentiality for direct monetary harm to the plaintiffs precludes the question of conflict of interest from being moot, although we note that plaintiffs have made no challenge to the validity of the consent forms.]

### 3. Conflict of Interest.

The instant case and other related cases ("Equal Pay Act Cases")<sup>37</sup> were brought on behalf of members of Local 32J of the Service Employees International Union, a labor union representing approximately 14,500 persons employed in the office building cleaning and maintenance industry in New York City. Approximately 11,500 of its members are women and 3,000 are men. The complaint alleges that defendants, Allied Maintenance Corporation ("Allied") and the building owners and managers who employ Allied have violated §6(d)(1) of the Equal Pay Act of 1963, 29 U.S.C. §206(d)(1) by paying female cleaning and maintenance workers lower wages and benefits than they pay to male cleaning and maintenance employees in the same establishments for work on jobs requiring equal skill, effort and responsibility and performed under similar working conditions. Subsequently, Local 32J was named as a third party defendant.

The law in this circuit on disqualification of counsel for a conflict of interest has been set forth most recently in Cinema 5, Ltd. v. Cinerama, Inc., slip op. 1639 (2d Cir. Jan. 27, 1976). In that case, the court found the "substantial relationship" test, customarily applied by the court, see, e.g., Int'l Electronics Corp. v. Flanzer, 527 F.2d 1288 (2d Cir. 1975) "does

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<sup>37</sup> There is one of approximately 76 equal pay lawsuits brought by more than 6,000 female members of Local 32J against approximately 289 defendants.

not set a sufficiently high standard by which the necessity for disqualification should be determined...[w]here the relationship is a continuing one...." In such an instance, the court found "adverse representation is prima facie improper." The burden was placed upon the attorney "to show, at the very least, that there will be no actual or apparent conflict in loyalty or diminution in the vigor of his representation." (emphasis in original).

Although Shea Gould concedes that it has been general counsel since at least 1959 to Local 32J, third party defendant in this case, it argues that there are no adverse interests between plaintiff union members and the Union. Shea Gould's belief that the interests of Local 32J and the individual member plaintiffs here are not in conflict is based in part on its contention that the collective bargaining agreements "do not provide for or foster sexual discrimination."

We cannot agree that the representation by Shea Gould of plaintiffs in the instant suit, while at the same time remaining general counsel to third party defendant Local 32J, is free from any actual or apparent conflict in loyalties.

The instant suit was filed by plaintiffs solely against the employers who, in turn, brought the Union into the case as third party defendants. At that point, the Union retained separate counsel to represent it in the instant case. However,

at an earlier, pre-litigation stage, it was upon the advice of Shea Gould that the Union advised its members to proceed under the Equal Pay Act against the employers instead, for example, of proceeding under Title VII against the Union as well, as was done in the related case of Willis v. Allied, 75 Civ. 955, and as is done in an ever-increasing number of other cases. See Communications Wkrs. of Am. v. N.Y. Tel. Co., 3 E.P.D. ¶9542 at 537. That decision was made on behalf of plaintiffs by a law firm, Shea Gould, which represented the Union as general counsel. As such, the initial advice given to plaintiffs in connection with this suit involved at the very least the appearance of conflicting interests.<sup>47</sup> At even this preliminary stage, we think that Shea Gould came up against the proposition that

"[a] lawyer may not place himself in a position where a conflicting interest may, even inadvertently, affect, or give the appearance of affecting, the obligations of the professional relationship."

Cinema 5, Ltd. v. Cinerama, Inc., slip op. 1639 at 1643 (2d Cir. Jan. 27, 1976) citing Matter of Kelly, 23 N.Y.2d 368, 376 (1968). The Cinema 5 court went on to cite a Connecticut

<sup>47</sup> It is because "an attorney must avoid not only the fact, but even the appearance, of representing conflicting interests," Cinema 5, supra at 1644 citing Edelman v. Levy, 42 App. Div.2d 758 (2d Dept. 1973), that we cannot give great weight to Shea Gould's explanation of the rationale behind that decision. (See Hecker aff. at 9-10).

decision which it summarized as finding that "the maintenance of public confidence in the bar requires an attorney to decline employment adverse to his client, even though the nature of such employment is wholly unrelated to that of his existing representation." Slip op. at 1643 ~~citing Gravelini Committee v. Rettner~~, 152 Conn. 49 at 65 (1964).

In addition to Shea Gould and the Union's role in directing the initial actions of the plaintiffs, the potential liability of the Union for the discrimination which is charged to have arisen by virtue of the collective bargaining agreements appears to this court to present conflicting interests between the two parties. See, e.g., Communications Workers of Am. v. N.Y. Tel. Co., 8 E.P.D. ¶9542 at 5358-9 (S.D.N.Y. 1974); Lynch v. Cherry Rand Corp., 62 F.R.D. 78, 84 (S.D.N.Y. 1973). As signatories to the agreements, the Union can be liable for discrimination. Johnson v. Goodyear Tire & Rubber Co., 491 F.2d 1364, 1381 (5th Cir. 1974). The collective bargaining agreements prior to 1971 are admittedly discriminatory on their face. And, although Shea Gould argues that there is no sex discrimination evidenced in the post-1971 collective bargaining agreements, the separate job categories which are substantially sex segregated and for which different pay scales are provided, at least raise questions of discrimination. In fact, Joseph Baumann, President of Local 32J, testified that Shea Gould ad-

vised him of the potential claims by the employers against the Union. And, Baumann testified that the Union members "resolved...[to] authorize an assessment against [themselves] to indemnify the Union for any [liability on the cross-claims]."

In addition to the above appearance of a conflict, two aspects of the settlement negotiations lead us to conclude that a conflict exists. Marvin Dicker, a partner at Proskauer, Rose, Goetz & Mendelsohn, counsel to the building owners defendants, testified that Shea Gould and not the separate counsel hired by Local 32J for the Equal Pay Act litigation represented Local 32J as well as the equal pay plaintiffs in all of the negotiations for settlement of the cases.<sup>5/</sup> The first settlement proposal, which did not provide for immediate equal pay, was found to be unacceptable by the United States Department of Labor.<sup>6/</sup>

We think the representation by Shea Gould of both the

<sup>5/</sup> These negotiations were apparently combined with the collective bargaining negotiations because of the position taken by the Realty Advisory Board that no collective bargaining agreement could be negotiated without settlement of the equal pay act cases. Dicker, Tr. at 171-172.

<sup>6/</sup> The settlement did provide, however, for dismissal of the cross-claims against the union. The Department of Labor refused to approve this settlement plan because it deferred compliance with the Equal Pay Act, which at that time had been in effect for over 10 years, for an additional three years. (Ex. 12, Motion to Intervene).

plaintiffs and the Union in negotiating this settlement presents a clear conflict. Even if we were to express confidence that no bad faith was present in negotiating that settlement, "we cannot impart the same confidence to the public by court order." Cinema 5, supra, at 1644 n. 1. Shea Gould argued that it was necessary to this case that the Union and its members have a united position. "[N]o law firm which did not have the full cooperation of Local 32J...could adequately protect the interests of the members of 32J." (Hecker aff. at 9 [motion to intervene]). However, as we have stated, the initial decision not to place the plaintiff Union members in an adversary role with the Union by foregoing claims against the Union was made by a law firm with at least the appearance of a conflict.

In addition to arguing the need for unity between the Union and members in order to obtain union cooperation, Shea Gould contends that unity was also necessary to obtain defendants' cooperation. At the hearing on

disqualification, Shea Gould called Joseph Crowley to testify as an expert in labor relations. Crowley gave his opinion that if any divisiveness between the Union and its members were apparent "management would seek to take advantage of that division." (Crowley, Tr. at 98). Such a rationale, we think, is not applicable to a lawsuit such as the instant one. In fact, we find that Shea Gould's representation of both plaintiffs and the Union during settlement negotiations entailed the representation of two parties with clear divergent interests. As counsel for Local 32J, Shea Gould had an interest in obtaining defendants' withdrawal of the cross-claims. As counsel for plaintiffs, such an interest did not exist. The clear possibility exists that Shea Gould negotiated a settlement less favorable to plaintiffs than might otherwise have

been obtained in return for dismissal of the cross-claims.<sup>7/</sup> Such a possibility, combined with the fact that the initial agreement negotiated was deemed inadequate by the Department of Labor, presents what we believe to be evidence of a conflict of interest.

We make this finding of a conflict despite the testimony of Samuel Gates, Esq. on behalf of Shea Gould. Gates testified from his experience as a member and former chairman of the Grievance Committee of the State Bar of New York. Although he had read the transcript from the March 5, 1976 hearing before this court in the instant matter, he testified that he had no other information concerning the matter and did not have any understanding concerning the alleged conflict in issue here. (Gates, Tr. at 89). The March 5 transcript contained the direct testimony of Baumann and Hecker.

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<sup>7/</sup> The final settlement approved by all parties and the court was protected in this regard by the participation of the department of labor and plaintiff-intervenors. We note that this court allowed intervention as of right under Rule 24(a)(2), (see oral decision, Tr. March \_\_, 1976) which required a finding that the proposed intervenors' interest "may be" inadequately represented. See Trbovich v. United Mine Workers, 404 U.S. 528 at 538 n. 10 (1972).

Therefore, although Gates stated that, in his opinion, he found no conflict of interest in the transcript which he read, that opinion cannot be given great weight in view of Gate's limited knowledge of the matter pending before us.

SO ORDERED.

Clarence M. Moseley  
United States District Judge

Dated: New York, N.Y.  
May 27, 1976.



EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
NEW YORK DISTRICT OFFICE  
26 FEDERAL PLAZA, ROOM 4002  
(At Foley Square)  
NEW YORK, NEW YORK 10007  
264-3840

Darleen Willis  
118 Corson Ave.  
Staten Island, New York 10301

Charge No.. TNY 1-0552  
Case No. YNY 3-598

Charging Party

vs.

Allied Maintenance Corporation  
2 Penn Plaza  
New York, New York

and

Building Service Employees Int'l Union,  
Local 32-J, AFL-CIO  
237 East 36th St.  
New York, New York

and

Building Service Employees Int'l Union,  
Local 32-B, AFL-CIO  
1 East 35th St. X  
New York, New York

Respondents

DETERMINATION

Under the authority vested in me by Section 1601.19b(d) of the Commission's Procedural Rules, 29 CFR (p. 20165) (September 27, 1972), I issue, on behalf of the Commission, the following Determination as to the merits of the subject charge.

Respondents are employer, and Unions, within the meaning of Title VII of the Civil Rights Act of 1964, as amended, and the timeliness and all other jurisdictional requirements have been met.

Charging Party alleges that the Respondents jointly discriminate against female employees and union members by maintaining sex segregated job classifications and wage schedules, by paying females lower wages than males performing substantially similar work, by guaranteeing a forty hour work week for males but not females, and by otherwise discriminating against females in the terms and conditions of their employment.

Allied Maintenance Corporation et al.

Page 2

On the basis of credible witness testimony, and a review of the payroll records and the collective bargaining agreements in effect at the time of the charge, I find that males and females are classified into jobs according to sex; that females are restricted to the lowest paying positions; and that females performing substantially similar work to that performed by males are paid lower rates. I find further that the agreements negotiated by Local 32-J (which has been historically and remains virtually a "female" union) provide lower welfare and pension fund benefits for its members, than those obtained in the agreements negotiated by Local 32-B, (which has been historically and remains virtually a "male" union).

I also find that Local 32-B members are guaranteed a forty hour work week, while Local 32-J members are not. Agreements negotiated by the Respondent Unions and industry-wide bargaining agents representing employers such as Respondent Employer since the date of the charge are more "neutral" in language, but nevertheless I find that, in essence, these agreements perpetuate a system which discriminates against females in violation of Title VII of the Civil Rights Act of 1964, as amended, as alleged.

Charging Party further alleges that she has been harassed and retaliated against by Respondent Employer and Respondent Local 32-J since she began protesting practices made unlawful employment practices under Title VII and since she filed charges protection the above-alleged employment practices. On the basis of the record, I credit Charging Party's allegations and find reasonable cause to believe that Respondent Employer and Respondent Local 32-J have retaliated against her in violation of Title VII of the Civil Rights Act of 1964, as amended.

Having so determined the Commission now invites the Respondents to join it in a joint resolution of this matter. A representative of the Commission will be in contact with the Respondents with regard to settlement of this matter.

ON BEHALF OF THE COMMISSION:

29 June 1973  
Date

D  
Daniel Murnane Mackey  
District Director

[Exhibit "2" attached to Affidavit of Isabelle Katz Pinzler, sworn to August 28, 1975, submitted in support of Order to Show Cause for Preliminary Injunction and Temporary Restraining Order in Willis v. Allied Maintenance Corp., et al., 75 Civ. 955 (CES) and made a part of the record on appeal by Order of the district court dated June 23, 1976.]

### SETTLEMENT AGREEMENT

AGREEMENT made this 12th day of June, 1975 among Local 32J, Service Employees International Union, AFL-CIO ("Local 32J"), the Realty Advisory Board on Labor Relations, Inc. ("RAB") and such other employers, employees or persons who agree to be bound by the terms thereof.

1. In the building maintenance industry in the City of New York, Local 32J represents (for purposes of collective bargaining) approximately 14,500 individuals who are engaged in building cleaning-maintenance work. These individuals are employed in over 1,000 office buildings in the City of New York. In addition, Local 32B, Service Employees International Union, AFL-CIO ("Local 32B") represents (for purposes of collective bargaining) approximately 18,000 other persons engaged in building maintenance-cleaning work. The individuals represented by Local 32B are employed in over 1,000 office and loft buildings in the City of New York.

2. Local 32J and Local 32B have entered into or are about to enter into industry-wide collective bargaining agreements providing for wage increases of \$1.25 an hour and other fringe benefits (exclusive of the amount of wages granted Local 32J as provided in paragraph 8 (d) herein) over the next three (3) years, amounting to more than a thirty (30%) percent increase in labor costs. These increases have been achieved by these unions, due to the dramatic necessity of maintaining these workers with a minimum standard of living in this critical inflationary period, and also despite the fact that the vacancy rate in the industry is at its highest level since the 1929-33 Depression, and that several major office buildings have filed petitions in bankruptcy. On top of these staggering but necessary increases in labor costs, the cost of fuel, oil and taxes in the past several years has more than doubled. Thus, any additional increases in labor costs might well force a significant number of office buildings into bankruptcy and/or result in substantial layoffs of building service employees in New York City.

3. At various times during calendar year 1974 women ("plaintiffs") who are or were members of Local 32J brought actions in the United States District Court for the Southern District of New York against members of the RAB and other corporations, companies, associations or individuals ("defendants") claiming, among other things, that the defendants were employers of the plaintiffs and had violated the equal pay provisions of the Fair Labor Standards Act, as amended (the "Act"). Answers have been filed by many of the defendants denying liability on various grounds, and third-party complaints have been filed by many defendants against Local 32J asserting, among other things, that if any liability exists, the liability is solely that of Local 32J. Third-party answers have been filed in those lawsuits where third-party complaints have been served upon Local 32J denying any liability on behalf of Local 32J.

4. The basis of plaintiffs' claim in the aforementioned lawsuits is that men employed by defendants, many of whom are represented by Local 32B, received and do presently receive up to \$.50 more per hour than plaintiffs received and do presently receive for the performance of work requiring equal skill, effort and responsibility to that performed by the plaintiffs under similar working conditions.

5. A preliminary review of the practices in the industry demonstrates that substantial variations exist in the work performed by the individuals who engage in cleaning maintenance and service work, regardless of whether they are represented by Local 32J or represented by Local 32B. The practices and work performed vary from building to building and vary from time to time, depending upon the ownership of the building, whether a cleaning contractor performs the work, who the cleaning contractor may be, who the managing agent of the building may be, the economic conditions of the building and the season of the year. Preliminary investigations also show that even within the same building there are variations of practices and variations in the job duties performed. These preliminary investigations show that certain individuals represented by Local 32J perform work which may be substantially different from the work performed by individuals represented by Local 32B, and that certain individuals represented by Local 32J perform work which may be equal in skill, effort and responsibility to the work performed by individuals represented by Local 32B.

6. In view of the aforementioned variations, the parties hereto have concluded that it might be necessary for the plaintiffs and defendants to engage in numerous separate and protracted trials involving difficult issues of fact and law in order to obtain a final determination of whether defendants have violated the equal pay provisions of the Act. These trials and pre-trial preparations would take substantial amounts of time; the parties might have to spend many weeks or even months observing the patterns of work in each of the more than 400 buildings where the present plaintiffs are now employed. The parties recognize that additional lawsuits may be commenced involving persons employed at an additional 600 buildings and that the time-consuming observations, preparation and trial proceedings just described might potentially be required for each of the more than 1,000 buildings where cleaning, maintenance and service employees work.

7. Because of the complexity of the legal issues involved, the amount of time necessary to determine the specific facts as to each building where the plaintiffs work, and the possible need for a separate trial of plaintiffs' claims in each building, final judgments in these actions cannot be expected for several years. Moreover, a review of the present economic situation of the real estate industry in the City of New York demonstrates that judgments in favor of plaintiffs might cause many bankruptcies in the industry, and will subject other defendants to severe financial strain and bankruptcies and will require many defendants to cut essential services to tenants. The plaintiffs, recognizing the difficult questions of fact and law raised in these actions, and further recognizing that such a successful result may cause layoffs of the plaintiffs and other workers, and in order to maintain their jobs and those of other workers, have concluded that it is in their best interests to resolve and compromise their claims in the manner set forth in this agreement.

Therefore, the parties hereto, in order fairly, equitably and reasonably to adjust the controversies created by the aforementioned lawsuits, have agreed as follows:

(a) The rate of pay for all cleaning maintenance work will gradually be adjusted in accordance with paragraph 8(d) hereof, so that at the conclusion of said three (3) year period the same basic rate shall be paid for all such work. Defendants, while not admitting that the work performed by the plaintiffs is equal as defined by the Act, agree that during the life of the RAB - Local 32J collective bargaining agreement commencing January 1, 1975, categories of work shall be continued in their present form and that no employee working under the jurisdiction of Local 32J shall be required to perform any labor different from that which he or she may presently be required to perform pursuant to the terms of the collective bargaining agreement. No general job categories shall be created which will divide work into light or heavy categories.

(b) (i) The parties hereto fully recognize the difference of their views as to the merits of their positions. Since it is impossible for the parties themselves to determine whether any individuals are entitled to additional compensation under the Act because they perform work under similar conditions equal in skill, effort and responsibility to higher paid jobs performed by employees of the opposite sex, an Inequity Fund shall be created.

(ii) Commencing January 1, 1975 all employers bound hereby shall contribute monthly to said Fund \$.05 an hour for each of their female employees, working under the jurisdiction of Local 32J, for each hour worked. Said \$.05 an hour contribution shall continue only through December 31, 1977. The proceeds collected shall be paid to Bank as custodian ("custodian bank"). Said custodian bank shall disburse such sums pursuant to direction by the Arbitrator as described in paragraph (b) (iii) - (vii) below. Said Funds shall be invested solely in short-term debt obligations of the United States, any short-term debt obligation that has an AAA rating of approval as defined by Standard and Poors or deposited in savings accounts of FDIC insured banks up to a maximum of \$40,000 in any one bank.

(iii) Harold Israelson, Esq. is hereby appointed Arbitrator hereunder and to act as Arbitrator solely as to claims for equal pay under the Inequity Fund. Any individual presently or formerly represented by Local 32J (whether or not plaintiffs) may make a claim against said Fund if he or she believes that the work he or she is performing or has performed is entitled to a higher rate of pay when compared to the work performed for a higher rate of pay by any individuals of the opposite sex performing cleaning-maintenance services. If the Arbitrator cannot settle such a claim without a hearing, the Arbitrator shall then hear and determine any such claim and all interested parties may present evidence to him. After such hearing or settlement in the absence of a hearing, he shall direct the custodian bank to make whatever payment, if any, he finds is required because claimant performed work requiring a higher rate of pay.

(iv) The Arbitrator hereunder may, upon the application of any party to this agreement, pay, adjust or settle any claims based on alleged violations of any contract clauses, federal, state or city statute, rule or regulation requiring equal pay together with all costs and expenses related to such claim. Said settlement shall be paid by the custodian bank upon direction of the Arbitrator.

(v) The Arbitrator shall receive compensation from the Inequity Fund.

(vi) It is specifically understood and agreed that this Inequity Fund be used to settle claims for equal pay arising under the collective bargaining agreements between the parties or of alleged violations of the equal pay provisions of the Fair Labor Standards Act, the Equal Employment Opportunity Act, the New York State and New York City laws against discrimination, and any

similar statute, rule or regulation, together with any reasonable expenses incurred in connection with such claims.

(vii) In the event the Arbitrator appointed fails to serve or becomes unable to serve, his successor, if not agreed upon by Local 32J and RAB, shall be appointed by the Chief Judge of the United States District Court for the Southern District of New York, or if he declines to do so, pursuant to the provisions of the rules of the American Arbitration Association.

(viii) On December 31, 1983, any amounts remaining in the Inequity Fund shall be transferred to the Building Cleaning Local 32J Welfare Fund. However, this paragraph 7 (b) (viii) is subject to renegotiation and modification by the RAB and Local 32J at the expiration of this agreement on December 31, 1977.

(c) Subject to the approval of the court, defendants agree to pay attorneys' fees and costs to plaintiffs' counsel, for all services rendered in the prosecution of all equal pay actions settled by this agreement, the sum of \$300,000.00 including disbursements and expenses. Such fees shall be divided so that cleaning contractors pay 75% of such fee and 25% be paid by owners who do direct cleaning. Defendants shall remit the fee approved by the court to the Inequity Fund Arbitrator thirty (30) days after said court approval and satisfaction of paragraph 10, and the Inequity Fund Arbitrator shall thereupon pay said fee to plaintiffs' counsel.

8. The collective bargaining agreement effective January 1, 1972 known as the Office Cleaners Agreement between the RAB and Local 32J (hereinafter referred to as "Office-Cleaners Agreement") be and hereby is continued in full force and effect through December 31, 1977 except as modified herein:

(a) Effective January 1, 1975, there shall be an hourly wage increase of \$.50 per hour.

(b) Effective January 1, 1976, there shall be an hourly wage increase of \$.375 per hour.

(c) Effective January 1, 1977, there shall be an hourly wage increase of \$.375 per hour.

(d) In addition to the above increases, in order to accomplish the objective of paragraph 7 (a) hereof, the following increases shall be added to the above increases:

July 1, 1975	\$ .12 an hour
January 1, 1976	\$ .10 an hour
January 1, 1977	\$ .10 an hour
December 31, 1977	The amount necessary to equalize the minimum rates called for under the Local 32B contract for those in the category "Others", in the particular building plus \$.02 per hour.

This paragraph shall not operate to increase the wage rate of the individuals represented by Local 32J to a rate higher than the rate provided for the category "Others" in the Local 32B contract for each building, except for \$.02 an hour on December 31, 1977.

(e) (i) Minima shall be increased in each year in the amounts provided above in paragraphs 8 (a), 8 (b), 8 (c) and 8 (d).

(ii) Effective January 1, 1976 the minima for matrons and foremen-foreladies shall be increased by \$.05 per hour.

(f) (i) Effective January 1, 1976, in the event that the percentage increase in the cost of living (Consumer Price Index for the City of New York) from November 1, 1974 to November 1, 1975, exceeds 12%, then, in that event, an increase of \$.03 per hour for each full 1% increase in the cost of living in excess of 12% shall be granted effective for the first full work week commencing after January 1, 1976. In no event shall said increase pursuant to this provision exceed \$.09 per hour. In computing increases in the cost of living above 12%, less than .5% shall be ignored and increases of .5% or more shall be considered a full point. Any increases hereunder shall be added to the minima.

(ii) Effective January 1, 1977 in the event that the percentage increase in the cost of living (Consumer Price Index for the City of New York) from November 1, 1975 to November 1, 1976, exceeds 10%, then, in that event, an increase of \$.03 per hour for each full 1% increase in the cost of living in excess of 10% shall be granted effective for the first full work week commencing after January 1, 1977. In no event shall said increase pursuant to this provision exceed \$.15 per hour. In computing increases in the cost of living above 10%, less than .5% shall be ignored and increases of .5% or more shall be considered a full point. Any increases hereunder shall be added to the minima.

(iii) Effective April 30, 1976, the employers shall increase their contribution to the Pension Fund in the amount of \$1.50 per employee per week. Effective April 30, 1977 the employers shall increase their contribution to the Pension Fund in an amount not to exceed \$1.50 additional per employee per week; this amount may be less than \$1.50 if the actuary's report indicates that a lesser amount is actuarially sound to maintain benefits.

In the event that all contributing employers to the Pension Fund (other than RAB members assenting to the RAB Agreement) pay the additional sums set forth herein on January 1, 1976 and/or January 1, 1977, then the dates herein shall be conformed to such dates.

Effective July 1, 1975, pensions for employees who have retired or will retire before July 1, 1976 shall be increased above the amount they are presently receiving or will receive pursuant to the terms of the Pension Plan by 10% or \$4.00, whichever is more; but in no event shall this provision increase pensions for such employees to more than \$80 per month.

On January 1, 1977, the pension for 25 years' service at age 65 shall be increased to \$160 per month. All other types of pension benefits shall be adjusted in accordance with law.

(g) With respect to the Welfare Fund, existing benefits shall be preserved, an adequate reserve shall be maintained and there shall be an increase in the major medical coverage to \$10,000 effective January 1, 1975 and an increase in life insurance coverage to \$5,000 effective July 1, 1976. There shall be no present increase in the contribution rate. If on or after July 1, 1976, however, the Trustees find the payment provided herein insufficient to maintain benefits and to increase life insurance coverage from \$4,000 to \$5,000, they may require the parties to negotiate to determine the amounts needed. In the event the parties are unable to reach agreement the matter shall be referred for determination under the procedures provided for under the Office Cleaners Agreement.

(h) The Pension Fund and Welfare Trust Agreements shall be amended to provide for interest assessment at the rate of 6% per annum, plus liquidated damages, for delinquent payments to said funds at the rate of 1½% per month of the total amount due for all contributing employers and any party executing this agreement shall be bound by this clause in any capacity he occupies including, without limitation, as a Trustee of said Trusts.

(i) (i) Effective January 1, 1975, any regular full-time employee with at least one (1) year of service (as defined below) in the building or with the same Employer, shall receive in a calendar year from the Employer ten (10) paid sick days per year from the first day of bona fide illness.

The employee shall receive the above sick pay whether or not such illness is covered by New York State Disability Benefits Law or the New York State Workmen's Compensation Act; however, there shall be no pyramiding or duplication of Disability Benefits and/or Workmen's Compensation Benefits with sick pay.

(ii) Effective January 1, 1975, employees who have continued employment to the end of the calendar year and have not used all sickness benefits shall be paid in the succeeding January, one-half (1/2) day's pay for each such unused day, not to exceed five (5) days' pay. Payment shall be based on the wages effective in the immediately preceding December.

(iii) Effective January 1, 1975, for the purposes of this section, one (1) year's employment shall be reckoned on the anniversary date of employment.

Employees who complete one (1) year of service after January 1, 1975, shall receive a pro rata share of sickness benefits for the balance of the calendar year.

(iv) All payments set forth in this section are voluntarily assumed by the Employer, in consideration of concessions made by the Union with respect to various other provisions of this agreement, and any such payment shall be deemed to be a voluntary contribution or aid within the meaning of any applicable statutory provisions.

(j) One additional holiday shall be granted effective January 1, 1975. In calendar 1975 said holiday shall be a date agreed upon by the parties. In calendar 1976 and thereafter said holiday shall be either Lincoln's birthday or shall be a date mutually agreed upon 30 days prior to Lincoln's Birthday.

(k) Effective January 1, 1977 the vacation schedule shall be modified to provide for 2 week's vacation with pay after one year's service.

(l) Effective January 1, 1975 employees who are required to serve on juries shall receive the difference between their regular rate of pay and the amount they receive for serving on said jury.

(m) Effective January 1, 1975, every regular-full-time employee who has been employed in the building for one (1) year or more shall receive an additional one (1) day off to visit the Health Center if the Health Center requires such a visit. To receive payment for such day, the employee shall exhibit a signed statement from the Health Center indicating such visit was required.

(n) The parties shall make such language changes as they have agreed upon in negotiations or which shall clarify the existing Office Cleaners Agreement.

(o) On July 1, 1976 Local 32J may reopen this agreement for the purpose of discussing the institution of a safety fund upon 30 days' written notice to the RAB prior thereto. This provision shall not be subject to the grievance and arbitration provisions of the Office Cleaners Agreement.

(p) The employers in the industry shall meet and confer with Local 32J to attempt to reschedule employees' quitting time to enable groups of nightworkers when practicable to leave work during times so that they can arrive home safely. Upon failure to agree, the matter may be referred to the RAB and Local 32J collective bargaining committees for further discussion, but not subject to grievance and arbitration.

9. In the event that Local 32J enters into any agreement with any employer granting such employer more favorable terms or conditions than contained in this agreement, this agreement shall be deemed to be modified to conform to such more favorable terms except that the present collective bargaining agreement between Local 32J and the Building Service League and/or Independent Contractors, copies of which are annexed to the original executed copy of this agreement, shall not be construed by any party hereto as being more favorable in terms or conditions to the terms or conditions contained in this agreement.

10. (a) This settlement agreement is subject to the entry of final judgment in a form to be agreed upon, as described in paragraph 11 hereof, terminating all of the Equal Pay lawsuits filed by the undersigned counsel on behalf of 32J members who have consented to this settlement. The settlement is further conditioned upon the execution of, in a form to be agreed upon, written releases, waivers and consents to the terms of this settlement by the plaintiffs and all other female members of Local 32J as of January 1, 1975, minus 100, exclusive of those deceased, employed on "commercial jobs" or who cannot be located and whose suits shall be withdrawn without prejudice. The definition of the term "commercial jobs" shall be agreed upon by Local 32J and the RAB. Thirty days from the execution hereof, a committee consisting of Messrs. Baumann, Mumm, Marville and Ford will review plaintiffs' progress in complying with this requirement, and if necessary, modify and redefine such required number of consents, waivers and releases so that the number is practically achievable and sufficiently protects the interests of the defendants and the Industry. In the event said Committee does not reach agreement on modifying the number of said consents, waivers and releases, such disagreement may be submitted to arbitration before the Inequity Fund Arbitrator provided said arbitrator may not modify the number of plaintiffs refusing to sign said consents, waivers and releases to more than one hundred (100). With respect to those plaintiffs refusing to sign said consents, waivers and releases, such refusal may be subject to verification by the defendants. Counsel for plaintiffs who cannot be located shall discontinue and withdraw, without prejudice, the lawsuits of such plaintiffs. Said above-described judgments and consents, waivers and releases shall not be required for actions against defendants (except defendants described in 10 (f) who do not join as parties to this settlement).

(b) (i) The Union and its counsel will make immediate efforts to obtain the required and agreed upon releases, waivers and consents.

(ii) After a period of 45 days (beginning on the date that this agreement is released from escrow), a list of all plaintiffs not located will be submitted to the RAB and the employer.

(iii) The RAB and the employers will then attempt to locate the listed unlocated plaintiffs within 20 days. All listed plaintiffs who have thus been located by the RAB and/or the employer within said 20 days shall be submitted to the Union and its counsel for the purpose of obtaining signed consents and releases.

(iv) Five days after the periods specified in (ii) and (iii), an application shall be made in the District Court to discontinue without prejudice any proceeding brought on behalf of a plaintiff who cannot be located.

(c) All female members, including plaintiffs and non-plaintiffs, of Local 32J who sign the releases, waivers and consents shall be entitled to a lump sum payment of One Hundred (\$100.00) Dollars. Upon submission to the RAB and the employer of an executed release, waiver and consent, the employer shall deposit in escrow One Hundred (\$100.00) Dollars to an interest bearing bank account. Said sum of \$100.00, without interest, shall be paid to each female member of Local 32J signing the release, waiver and consent upon satisfaction of all provisions of paragraphs 10 and 11. In the event any funds remain in the escrow account after satisfaction of paragraphs 10 and 11, said funds shall be paid into the Inequity Fund. If the provisions of paragraphs 10 and 11 are not satisfied, said escrow account shall be returned to the respective employers.

(d) Where releases, waivers or consents are sought or obtained from persons who are not plaintiffs; or releases, waivers and consents are sought or obtained from plaintiffs of claims not asserted in the actions commenced by undersigned counsel, such releases, waivers and consents shall be obtained only in a form to be agreed upon, and only upon and after full disclosure to the person from whom such releases, waivers or consents are obtained of all claims and potential claims asserted by the plaintiff in an action entitled "Darlene K. Willis vs. Allied Maintenance Corporation, et al.," pending in the United States District Court for the Southern District of New York, file number 75 Civ. 955 ("the Willis action"). In addition, each release and waiver obtained from a person who is not a plaintiff or of claims not asserted in the actions being settled hereby will recite that the person giving such consent is aware of the pendency of the Willis action and is aware that the release and waiver may operate to discharge claims which have been raised or might be raised on her behalf in the Willis action.

(e) In the event the pending lawsuit is withdrawn and discontinued with prejudice against any defendant, the third-party complaint now pending against Local 32J and any other third-party defendant by such defendant shall also be withdrawn with prejudice.

(f) In the instance where a defendant employs a cleaning contractor, the actions now pending as against such defendant shall be withdrawn and discontinued with prejudice at such time as the cleaning contractor becomes a signatory to this agreement.

11. This agreement is subject to and shall take effect only if it is entered as a final judgment, in a form to be agreed upon, by the United States District Court for the Southern District of New York directing the parties to comply with the terms hereof.

Local 32J, Service Employees International  
Union, AFL-CIO

/s/ Leo R. Fink, Chairman of  
the Board

Prudential Building Maintenance Corp.

/s/ Joseph J. Baumann, as President and  
Business Manager

By \_\_\_\_\_

Realty Advisory Board on Labor  
Relations, Inc.

/s/ Morton Sweig, Vice Chairman of  
the Board

National Kinney Corp.

/s/ Hamilton G. Ford, Executive  
Vice President

By \_\_\_\_\_

On Behalf of all of the Plaintiffs

In

v.

By \_\_\_\_\_

Defendant and Third-Party Plaintiff

By \_\_\_\_\_

Third Party Defendant, Local 32J, Service  
Employees International Union, AFL-CIO

By \_\_\_\_\_

Employer

By \_\_\_\_\_

Contractor

By \_\_\_\_\_

WITNESS

/s/ Harold G. Israelson

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x

MARIA NURSE, et al., :  
Plaintiffs, : 74 Civ. 4889 (C.E.S.)  
-against- :  
ALLIED MAINTENANCE CORPORATION, : AFFIDAVIT IN OPPOSITION  
et al., : TO MOTION TO INTERVENE  
Defendants. :  
----- x

STATE OF NEW YORK ) : ss.:  
COUNTY OF NEW YORK )

BRUCE A. HECKER, being duly sworn, deposes and says:

1. I am a member of the firm of Shea Gould Climenko, Kramer & Casey, attorneys for plaintiffs in this action. I make this affidavit in opposition to the motion of Darlene K. Willis, to intervene as a plaintiff "on her own behalf and on behalf of all other persons similarly situated, in order to be heard on the issue of relief which may be ordered in this case."

2. In effect, Mrs. Willis is seeking to intervene in order to be heard on the question of whether a settlement of this case should be approved. In support of her application, she contends that a settlement of this action will allegedly affect her rights, jeopardize her ability to protect the rights of the members of her proposed class and will not adequately protect her interests. Plaintiffs contend that the motion to intervene is premature because there is presently no settlement or proposed settlement of this action before the Court and, unless certain conditions prescribed in the settlement agreement are fulfilled,

the settlement will not be submitted to the Court and will not be effective. In any event, plaintiffs contend that the motion to intervene should be denied because:

(1) Mrs. Willis has no interest in the subject matter of this action and no standing to interfere in a settlement of individual claims by individual plaintiffs even if those plaintiffs might otherwise be included in a class which Willis purports to represent in another action;

(2) because the claims which Willis would make in her intervening complaint are inconsistent with and antagonistic to the claims which plaintiffs have made on their own behalf in this action; and

(3) because intervention would not give plaintiff Willis any greater protection than she has already been given by the Court in her own action, but would merely result in a wasteful duplication of claims and procedures.

In this affidavit I will briefly describe the nature and status of this action and of the separate action brought by Mrs. Willis on her own behalf, and I will respond briefly to Mrs. Willis' claims that the law firm which represents plaintiffs in this action is involved in a conflict of interest in doing so.

(a) The Nature of the Claims:

3. This action, Nurse v. Allied Maintenance Corporation, et al. is brought by 641 female members of Local 32J alleging that Allied Maintenance Corporation and its employers have violated §6(d)(1) of the Equal Pay Act of 1963, 29 U.S.C. §206(d)(1) by paying their female cleaning and maintenance employees lower wages and benefits than they pay to their male

cleaning and maintenance employees in the same establishments for work on jobs requiring equal skill, effort and responsibility and which are performed under similar working conditions. Each female member whose claims are asserted in this action has affirmatively consented to the bringing of this action and, in accordance with 29 U.S.C. §§216 and 256, their individual written consents have been filed with the Court. These consents specifically authorize my firm to prosecute plaintiffs' claims for equal pay. The plaintiffs in this case and my firm as plaintiffs' counsel do not represent or purport to represent anyone who has not consented to such representation and to the bringing of this action.

4. Willis v. Allied Maintenance Corporation, et al.,

75 Civ. 955, is a separate action brought by the proposed intervenor, Mrs. Willis, who purports to represent all present and past female members of Local 32J who are or were employed to perform cleaning and maintenance services by Allied Maintenance Corporation or any of its subsidiaries, including the 641 women who have specifically retained my firm to bring this action. Mrs. Willis' action includes alleged class action claims as well as individual claims which she brings on her own behalf. Her claim under the Equal Pay Act--the Act on which the Nurse action is based--is an individual one, which she brings only on her own behalf. Mrs. Willis' claims are asserted against Allied Maintenance Corporation and several of its subsidiaries, Local 32J, Local 32B, the Service Employees International Union, the Realty Advisory Board on Labor Relations, Inc., the Building Service League and Mrs. Willis alleges:

- (1) that Allied has followed a policy of segregating women into a category of jobs which receives lower pay and lesser benefits and fewer guaranteed hours of work than similar jobs performed by men, and that such discriminatory practices are not reasonably related to the ability to perform the work required by those job classifications;
- (2) that Allied pays lower wages and benefits to female cleaning and maintenance employees than it pays to its male employees in the same establishments for work on jobs requiring equal skill, effort and responsibility, and which are performed under similar working conditions;
- (3) that the discriminatory practices alleged have been sanctioned by collective bargaining agreements entered into by the defendant Unions;
- (4) that Local 32J and 32B are sex segregated Unions;
- (5) that the defendants including the Unions have conspired to deprive Darlene Willis and other women employed by Allied of their civil rights;
- (6) that the Unions have breached their duty to represent their members fairly.
- Willis contends that the acts alleged violate various federal statutes, including Title VII of the Civil Rights Act of 1964, §9(a) of the National Labor Relations Act, §6(d)(1) of the Equal Pay Act and §6(d)(2) of the Fair Labor Standards Act.
5. As noted above, all of the claims under the Equal Pay Act are distinct individual claims, and not the subject of class action allegations. The individual claimants here have asserted rights only under the Equal Pay Act, and have not purported to assert rights on behalf of Mrs. Willis. To the

extent that Mrs. Willis asserts claims under the Equal Pay Act in her own action, she does so on her own behalf and not on behalf of the plaintiffs here. To the extent that she purports to represent a class (her class action motion is returnable on October 16, 1975) which may include plaintiffs here, she does so under other statutes. While all claims under the Equal Pay Act are being asserted by individuals on their own behalf, to some extent, the other claims asserted by Willis under other federal statutes overlap with the claims under the Equal Pay Act. Plaintiffs contend, however, that those other claims are inconsistent with the claims under the Equal Pay Act. Thus, for example, Willis claims that she has been denied access to jobs which would guarantee her higher pay and more hours of work. In effect, her claims admit that there may be a difference between the work which Mrs. Willis has been permitted to do and the work which the men employed by Allied are doing for a higher rate of pay. The claims brought by the plaintiffs in this case do not admit that there is any such difference, but are based on the theory that all of the work which is presently being done by plaintiffs is equal in skill, effort and responsibility to the work being done by the men for higher pay. Thus, Mrs. Willis' claims amount to a concession that she is not doing equal work, while the claims asserted by plaintiffs here do not admit any such concession.

(b) The Status of the Action.

6. Nurse v. Allied Maintenance Corporation, et al.

was filed in this Court on November 7, 1974. This action is presently one of 76 lawsuits pending in the United States District

Court for the Southern District of New York on behalf of more than 6,000 female members of Local 32J against approximately 280 defendants.\* These lawsuits were filed between June 19, 1974 and April 30, 1975 and involve virtually the entire cleaning and maintenance industry in the Borough of Manhattan, State of New York. Six of these actions include the bulk of the defendants (212), joining the cleaning contractors which employ plaintiffs and the employers of the cleaning contractors.

7. After these lawsuits were commenced, the parties entered into protracted and difficult settlement negotiations culminating in a tentative agreement to compromise the parties' claims. A copy of the agreement is annexed as Exhibit "A". The proposed settlement requires as a precondition that all but 100 female plaintiffs in all of the actions, (exclusive of those deceased, moved or out of the industry) sign consents to be bound by the settlement, that the defendants and other employers of women in the cleaning and maintenance industry in the Borough of Manhattan, City of New York, agree to be bound by the settlement and that the settlement agreement will be effective only upon entry of judgment in this Court directing the parties to comply with its terms. Not all of these conditions have been met, and there is no settlement or proposed settlement before the Court. Because there is no agreement before the Court, I will not at this time comment on its terms or its merits. I believe, however, that Mrs. Willis has incorrectly characterized many terms of the agreement in her papers, and, at the appropriate time, I will respectfully request leave to correct these errors.

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\* 70 of these lawsuits are pending before Judge Richard Owen.

8. I believe that what I have said so far shows that the Motion to Intervene is premature and that, in any event, Mrs. Willis has no interest in the subject matter of this action. The claims which would be settled by the tentative settlement agreement do not include Mrs. Willis' claims, which she is free to pursue in her own action on behalf of herself and on behalf of all other members of her "class" who have not themselves consented to the settlement and waived their claims. Mrs. Willis has no proprietary interest in the individual claims of her alleged class members, and those individual claims are the only subject of this action.

I believe it is also clear that the proposed settlement agreement would not affect Mrs. Willis' rights or the rights of her purported class in such a way as to give her standing to prevent the consummation of the settlement. The parties to the settlement agreement recognized that, while the agreement does not purport to settle Mrs. Willis' action, her class action claims under Title VII overlap to some extent with the individual claims being settled under the Equal Pay Act.

Because we recognize this overlap, we insisted that all releases which might be obtained--from potential class members as well as non-class members--should refer directly and explicitly to the Willis case and to the possibility that claims asserted in the Willis case might be affected by the release. Mrs. Willis' own rights, however, and the rights of those people who have not signed releases, are not compromised by the settlement agreement. Indeed, Willis does not contend otherwise, but she claims that the settlement agreement affects

her rights because it sets out the terms and conditions of her employment and of the employment of other persons in her bargaining unit for the next three years. In this respect, Willis is correct, because the agreement to settle the lawsuits is combined with a collective bargaining agreement between Local 32J and the employers. The fact that Mrs. Willis is affected by the collective bargaining portion of the agreement, however, does not give her the right to intervene to prevent the settlement of individual claims brought by individual plaintiffs in a separate lawsuit. The collective bargaining agreement affects her not because the agreement settles or compromises her lawsuit but simply because she, like other members of Local 32J, is a member of the collective bargaining unit which the agreement will govern. If she believes that the terms of the collective bargaining agreement are improper, then, if and when it becomes effective, she should challenge it by a plenary action, just as she has challenged the previous agreements. Such a challenge is premature at this time.

9. In any event, in connection with her motion for a preliminary injunction in her own case, the Court assured Mrs. Willis that she will be given the opportunity to challenge any releases which affect her action and her alleged class. (Transcript of Hearing before Hon. Charles E. Stewart, September 3, 1975, pp. 22-23.) Since she has not been declared a class representative yet, it is not clear whether any of the releases secured so far will have any affect upon her or her ability to protect the purported "class."

10. Finally, Willis claims that her interests are not adequately protected in the Kurze action. Indeed, Willis suggests that the interests of none of the plaintiffs in Kurze have been adequately protected because of the alleged conflict of interest which arises out of my firm's representation of the plaintiffs. Although Mrs. Willis has not asked for any relief on this basis and has clearly stated that she and her attorneys have no interest in taking over the representation of these plaintiffs, I feel obligated to reply to her allegations.

11. Mrs. Willis argues that my firm, which has acted as general counsel to Local 32J, can not represent the individual members of Local 32J in actions to recover equal pay. Mrs. Willis bases this claim on her allegation that the Union is one of the wrongdoers and has, in fact, created and perpetuated the system by which women are now paid wages lower than those paid to men doing equal work. The fact, however, is that no law firm which did not have the full cooperation of Local 32J and which was not familiar with the background of the previous negotiations for equal pay could adequately protect the interests of the members of 32J. Local 32J was the motivating force behind the commencement of these actions for equal pay. Local 32J sought our advice as to how its members could recover equal pay, Local 32J urged its members to sue for equal pay and Local 32J obtained the consents necessary for actions under the Equal Pay Act. Our decision to advise the members to proceed under the Equal Pay Act rather than to proceed by a class action under Title VII was not designed to protect Local 32J, but was based on our desire to proceed with the actions promptly, without administrative delay, and without

making any concessions or allegations (like those made by Mrs. Willis) which might result in a change in job content or hours which, in our view and in the view of Local 320, would be extremely harmful to the members. By proceeding under the Equal Pay Act rather than under Title VII, we were able to commence an action immediately after securing the consents necessary under the Equal Pay Act.<sup>1</sup> Mrs. Willis, on the other hand, and anyone who sought to proceed under Title VII, could have been required to submit to extensive administrative procedures required by Title VII of the Equal Employment Opportunity Act, 42 U.S.C. §2000e-2 et seq. This can be seen from Mrs. Willis' own experience. She filed a discrimination charge with the United States Equal Employment Opportunity Commission ("EEOC") on April 23, 1971. More than two years passed before a finding of probable cause issued from the EEOC on June 29, 1973. It was only after the failure of conciliation in 1974 that the LEOC sent Willis a letter on January 27, 1975 informing her of her "right to sue." (Affidavit of Isabelle Pinzler sworn to on the 28th of August 1975, paragraph 4.) In order to avoid such procedural delays (almost 4 years in the Willis action) we purposely instituted action under the Equal Pay Act of 1963 even though it required an extraordinary effort on the part of Local 320 to obtain the written consents of the more than 6,000 plaintiffs, which it did after its members had authorized it to take whatever steps might be necessary to secure equal pay for them.

12. As a result of Local 320's efforts, Shea Gould has been able to institute legal actions for over 6,000 women

against hundreds of defendants, thus stopping the running of the statute of limitations on their claims.

13. In addition, by commencing actions under the Equal Pay Act, we were able to allege that the plaintiffs are now entitled to equal pay for the work which they are already doing. Mrs. Willis, on the other hand, alleges that she and the members of her alleged class have been excluded from higher paying jobs with longer hours, thus conceding, in effect, that the differing wage rates are justifiable and are based on a significant difference in job content. Because of their family responsibilities, many members simply cannot and have no desire to work longer or different hours, and a requirement that they work longer or different hours in order to obtain equal pay might prevent them from working at all. Our objective has been and is to obtain equal pay for the plaintiffs without requiring them to work longer or different hours and without requiring any change in job content. The proposed settlement agreement achieves this end.

14. During the progress of the action and the settlement negotiations, we have made every effort to keep plaintiffs and other female members of Local 32J informed. In or about the week of August 11, 1975 a letter in five languages, (English, Spanish, Polish, Serbo-Croatian and Ukrainian) was distributed to the members of Local 32J. (A copy of the letter is annexed hereto marked Exhibit "B".) This letter also contained a form entitled "Consent to Settlement and Release" translated into the same five languages. The consents varied slightly depending upon whether the person receiving said consent was a plaintiff

or non-plaintiff. There was distributed along with Exhibit "B" the full text of the proposed settlement agreement and a full copy of Mrs. Willis' complaint. A copy of these documents, as distributed, is annexed hereto as Exhibit "C". Exhibit "B" states in all five languages:

"These are IMPORTANT documents which affect your legal rights. You should read these documents before signing the CONSENT, and if you have any questions about those documents, please contact your Union officers or plaintiffs' legal counsel, Shea Gould Climenko Kramer & Casey, (212) 661-3200, extension 238."

15. Subsequently, on or about October 3, 1975, a five-page letter in the same five languages as Exhibit "B" was mailed to all the female members of Local 32J explaining in detail the terms of the settlement agreement, the Darlene Willis action and the effect of signing the consent to the settlement. A copy of this letter is annexed hereto and marked Exhibit "D". This letter advised the recipients that they could consult with Shea Gould, Local 32J or counsel of their own choice about the settlement agreement or Darlene Willis' complaint. The letter states on the last page:

"If you have any questions regarding the settlement agreement or Darlene Willis' complaint, please contact your Union or plaintiffs' legal counsel, Shea Gould Climenko Kramer & Casey, (212) 661-3200, extension 238, or counsel of your choice."

The letter also offered its recipients the right to revoke their earlier consents if they desired to do so. To date, Shea Gould has received three requests for revocation forms (a copy of which is annexed hereto and marked Exhibit "E") which are also translated into the same aforesaid five languages.

Revocation forms were sent where requested but so far none have been returned.

18. I respectfully submit that our representation of the plaintiffs has involved no conflict of interest, and that, for the reasons stated above, the motion to intervene should be denied.

\_\_\_\_\_  
Bruce A. Becker

Sworn to before me this  
11th day of October, 1975.

Notary Public, State of New York  
No. 149-292  
Qualified in Westchester County  
Commission Filed in New York County  
Term Expires March 31, 1976

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SUPP. A.41

-----x  
DARLENE K. WILLIS, individually and :  
on behalf of all others similarly :  
situated, :  
Plaintiff, : 75 Civ. 955 (C.E.S.)  
-against- :  
ALLIED MAINTENANCE CORPORATION, et al., :  
Defendants. :  
-----x  
MARIA NURSE, et al., :  
Plaintiffs, :  
and :  
DARLENE K. WILLIS, individually and :  
on behalf of all others similarly :  
situated, :  
Proposed Plaintiff-Intervenor, :  
-against- :  
ALLIED MAINTENANCE CORPORATION, et al., :  
Defendants.  
-----x

ORDER TO SHOW CAUSE FOR  
DISQUALIFICATION OF  
COUNSEL, INJUNCTION, AND  
TEMPORARY RESTRAINING  
ORDER

Upon the annexed affidavit and upon all the papers and proceedings had herein, it is hereby ORDERED that the law firm of Shea, Gould, Climenko, Kramer & Casey; and William C. Finneran, Jr., Esq. and Bruce Hecker, Esq., show cause before this Court on the 18<sup>th</sup> day of February, 1976, at 10:00 a.m. in Room 705 of the United States Courthouse, Foley Square, New York, New York, why an Order should not issue granting Plaintiff and Proposed Plaintiff Intervenor Darlene K. Willis the following relief:

1. An Order disqualifying the law firm of Shea, Gould, Climenko, Kramer & Casey, and all attorneys associated therewith, from appearing on behalf of plaintiffs in Nurse v. Allied Maintenance Corp., et al., 74 Civ. 4889 (C.E.S.) on the ground of conflict

of interest and requiring said law firm to notify each such plaintiff of its disqualification and the reasons therefor, and

2. An order, pursuant to Rule 65 of the Federal Rules of Civil Procedure, enjoining defendant Local 32J of the Service Employees International Union ("Local 32J") and its General Counsel, Shea, Gould, Climenko, Kramer and Casey ("Shea Gould") and all attorneys associated therewith, their agents, employees, and all other persons in active concert and participation with them from exerting pressure, or influence of any kind and in any manner, either in writing or orally, upon members of the proposed Willis class in an effort to persuade or coerce or mislead them into opposing the Willis Proposed Consent Decree currently before this Court, and from characterizing said Proposed Consent Decree in any fashion so as to misrepresent to members of the proposed Willis class the true terms and conditions of the Willis Proposed Consent Decree, and to compel said defendant Local 32J and/or its General Counsel to retract and correct misinformation, misrepresentations, fabrications and distortions of the terms and conditions of the Proposed Consent Decree which they have circulated or caused to be circulated to members of the proposed Willis class, said retraction and corrections to be made in a manner and form approved by this Court.

The parties to a Proposed Consent Decree in Willis v. Allied Maintenance Corp., et al., 75 Civ. 955 (C.E.S.) having submitted said Proposed Consent Decree to this Court, and the Court having on January 30, 1976, approved a notice to be sent to members of the proposed plaintiff class to inform them fully and fairly of the terms and conditions of said Proposed Consent Decree, and the parties to the Proposed Consent Decree having requested this Court to hold a hearing in which all members of the proposed Willis class will have an opportunity to question terms and conditions

of the Proposed Consent Decree, it now appearing from the Amended Complaint, the annexed affidavit, and the Memorandum in Support of this application that immediate and irreparable harm will occur to plaintiff and members of the proposed plaintiff class, as defined in Plaintiff's Amended Complaint ("Willis class"), in Willis v. Allied Maintenance Corp., et al., 75 Civ. 955 (C.E.S.) if the status quo is not maintained,

IT IS HEREBY ORDERED that, pending the hearing and determination of this matter, defendant Local 32J and its General Counsel, Shea Gould and all attorneys associated therewith, and their agents, employees, and all persons in active concert and participation with them are (1) restrained from exerting pressure, influence of any kind and in any manner, either in writing or orally, upon members of the Willis class in an effort to ~~persuade~~ or coerce or mislead them into opposing the Willis Proposed Consent Decree currently pending before the Court; (2) restrained from characterizing said Proposed Consent Decree in any fashion so as to misrepresent to members of the Willis class the true terms and conditions of the Willis Proposed Consent Decree; and (3), ordered to retract and correct in a manner to be approved by this Court, misinformation, misrepresentations, fabrications, and distortions of the terms and conditions of the Willis Proposed Consent Decree which said defendant Local 32J and/or its General Counsel have circulated or caused to be circulated to members of the Willis class;

IT IS FURTHER ORDERED that security herein be waived; and

IT IS FURTHER ORDERED that service on attorneys for the parties on or before 7:30 P.M. on the 17<sup>th</sup> day of February,

by personal  
Service or by mail

SUPP. A. 44

1976, shall be deemed good and sufficient service.

Hon. Charles E. Stewart, Jr.  
UNITED STATES DISTRICT JUDGE

DATED: New York, New York  
February 17, 1976

Issued at 6:20 P.M.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SUPP. A. 45

DARLENE K. WILLIS, individually and on behalf :  
of all others similarly situated, :

Plaintiff, : 75 Civ. 955 (C.E.S.)

-against-

ALLIED MAINTENANCE CORPORATION, et al., :

Defendants. :

-----x AFFIDAVIT

MARIA NURSE, et al., :

Plaintiffs, :

75 Civ. 4889 (C.E.S.)

-and-

DARLENE K. WILLIS, individually and on behalf :  
of all others similarly situated, :

Proposed Plaintiff-Intervenor, :

-against-

ALLIED MAINTENANCE CORPORATION, et al., :

Defendants. :

-----x

Joan Bertin Lowy, being duly sworn, deposes and says:

1. I am an attorney for Darlene K. Willis (hereafter referred to as "plaintiff"), who is plaintiff in Willis v. Allied Maintenance Corporation, et al., 75 Civ. 955 (C.E.S.) ("Willis") and who is proposed plaintiff-intervenor in Nurse v. Allied Maintenance Corporation, et al., 74 Civ. 4889 (C.E.S.) ("Nurse"), and I submit this affidavit in support of plaintiff's Order to Show Cause for Disqualification of Counsel, Injunction, and Temporary Restraining Order.

2. It is necessary to proceed by Order to Show Cause in order to preserve the status quo, because the actions of Defendant Local 32J of the Service Employees International Union ("Local 32J") and its General Counsel,

Shea, Gould, Climenko, Kramer & Casey ("Shea Gould"), which are detailed more fully infra, imminently threaten the rights of plaintiff members of the proposed Willis class ("Willis class") regarding the Willis Proposed Consent Decree, currently before this Court.

3. This case is a class action seeking declaratory and injunctive relief to redress discrimination on account of sex in the employment of female building cleaning and maintenance workers. This action is brought against plaintiff's employer (Allied), the unions representing the employer's cleaning and maintenance workers (the International and Locals 32J and 32B of Service Employees International Union, AFL-CIO) and two employer associations (the Building Services League (BSL) and the Realty Advisory Board on Labor Relations, Inc. (RAB)), which negotiate, on behalf of employers, the collective bargaining agreements governing the terms and conditions of the workers' employment.

4. On April 23, 1971, plaintiff Willis filed a discrimination charge with the United States Equal Employment Opportunity Commission ("EEOC") naming Local 32J (the predominately female local) and Local 32B (the predominately male local) the International, and Allied as respondents. The EEOC found probable cause to believe plaintiff's rights had been violated in a determination dated June 29, 1973 (a copy of which is annexed as Exhibit "A" to Plaintiff's Amended Complaint). On November 29, 1974, the EEOC informed plaintiff Willis of its failure of conciliation. On January 27, 1975, plaintiff Willis received from the EEOC a letter informing her of her "right to sue" (a copy of the letter is annexed as Exhibit "B" to Plaintiff's Amended Complaint). Plaintiff commenced this law suit on February 26, 1975.

5. In the spring of 1974, prior to the filing of the Willis complaint, but substantially after the probable cause determination in plaintiff's case before the EEOC, Local 32J a respondent in the EEOC case and a defendant in this action began soliciting from its female members authorizations for its General Counsel, Shea Gould, to represent such members in actions for violations of the Equal Pay Act of 1963 (29 U.S.C. §206(a)). (See the deposition of

Joseph L. Baumann, President of Local 32J, taken on August 12, 1975, at pp. 17-23, 29-32, and pertinent part of Exhibit 11B, 11E, 12 and 13 thereto.) Said authorizations provided that Shea Gould would receive twenty-five percent of any monies received by each such woman. (A copy of the authorization is attached hereto as Exhibit "A".)

6. Two such actions, Nurse, et al. v. Allied Maintenance Corporation, et al., 74 Civ. 4889 and Manfredi et al. v. National Kinney Corp., et al., 74 Civ. 4846, are currently pending before the Honorable Charles E. Stewart, the Judge to whom the Willis case is assigned. (The Willis case is most closely related to the Nurse case in that the employer-defendant in each is Allied Maintenance Corporation.)

7. The plaintiffs in these suits, and all others commenced under the auspices of Local 32J are represented by the law firm of Shea Gould. This law firm is and has been General Counsel to Local 32J since at least 1959. (See Baumann deposition, pp. 10, 13 & 14, attached as Exhibit "1" to Affidavit of Isabelle Katz Pinzler dated August 28, 1975, previously submitted to this Court.)

8. Shea Gould has served as legal counsel to Local 32J in all contract negotiations since at least 1959 (see Baumann deposition, pp. 13 & 14) and represented Local 32J in the Willis case when it was before the EEOC. They are not counsel of record for Local 32J in the present Willis action.

9. With the assistance of the United States Department of Labor, and the EEOC, which has moved to intervene in Willis, the parties in the Willis action and the parties to Nurse and the other Equal Pay Act cases (hereafter referred to collectively as "Nurse") have agreed to settlements of the equal pay aspects of all the cases in a consistent and integrated fashion. The parties to the Nurse actions have negotiated, simultaneously with the settlement of those lawsuits and incorporated in one document, an industry-wide collective bargaining agreement ("industry agreement"). (A copy of the agreement and the

notice sent to union members is attached hereto as Exhibit "B.") The industry agreement provides, inter alia, that all women who accept the settlement and who do not revoke prior consent will have waived rights under the Equal Pay Act and under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e, et seq., and may have waived other rights asserted in the Willis action but not asserted in the Nurse cases. (See Exhibit "B," ¶10a and a copy of the waiver, attached hereto as Exhibit "C.")

10. Because of such waivers of legal rights (the validity of which plaintiff has consistently challenged; see Memorandum in Support of Plaintiff's Motion for Intervention in Nurse, dated September 25, 1975), the parties in Willis and the Nurse cases have recognized that resolution of the Nurse action would prejudice rights asserted on behalf of the class in Willis but not asserted in Nurse, unless both cases were settled simultaneously.

11. As a result of this understanding, the industry agreement and the Willis Proposed Consent Decree resolve all equal pay claims in precisely the same fashion, on an industry-wide basis. Attempts by plaintiff and the EEOC to negotiate a back pay award for the Willis class greater than that agreed upon by the parties to the industry agreement were opposed by Local 32J, through its General Counsel Shea Gould.

12. Throughout the negotiations, organized at the instance of the Department of Labor, Shea Gould appeared on behalf of both Local 32J and the plaintiffs in the Nurse cases. At most if not all meetings, attorneys from Shea Gould were accompanied by Mr. Joseph L. Baumann, President of Local 32J and by Mr. Donald Mumm, Vice-President of Local 32J.

13. Plaintiff has consistently taken the position that the interests of the plaintiffs in Willis and the Nurse cases are not consonant with the interests of Local 32J, because Local 32J and its General Counsel have participated in negotiating the very discriminatory collective bargaining agreements which form the bases for all the lawsuits. (See papers in support of Plaintiff's Motion for a Preliminary Injunction and Plaintiff's Motion for Rehearing and

Motion to Intervene, dated September 25, 1975.) Because of this fact, affiant submits that Shea Gould has a blatant conflict of interest in its role as General Counsel to Local 32J and as attorneys for the plaintiffs in the Nurse cases by virtue of its continuing representation of clients with adverse interests in the same dispute.

14. The facts underlying this conflict of interest were brought to the Court's attention in multiple motions filed in Willis and in Nurse since August 28, 1975, when plaintiff first became aware of the true nature of the conflict. (See affidavits of Isabelle Katz Pinzler dated August 28, 1975 and September 27, 1975, previously submitted to this Court.) Briefly stated, the conflict of interest is further evidenced by the following facts:

a. The Equal Pay Act cases (Nurse, et al.) filed by Shea Gould named only employer defendants, not Local 32J, even though it is indisputable that the union participated in negotiating the collective bargaining agreements, the unequal terms of which formed the basis for the lawsuits. Local 32J was subsequently named as third-party defendant.

b. A previous settlement of Nurse and collective bargaining agreement negotiated by Local 32J with the assistance of Shea Gould failed to provide even minimal compliance with the Equal Pay Act. That settlement was opposed by plaintiff and was rejected by the Department of Labor in a letter dated September 10, 1975, a copy of which is attached hereto as Exhibit "D."

c. Without notice to attorneys for the Willis class, Local 32J and its General Counsel solicited waivers and releases of legal rights asserted in the Willis action but not in the Nurse cases from the plaintiff herself as well as from members of the class.

15. On January 27, 1976, the parties to the Willis settlement (plaintiff is settling equal pay and equal access claims only against the employer and employer associations; claims against the union remain unresolved)

submitted to this Court a Proposed Consent Decree and notice to class members. On January 30, 1976, the form of notice was approved by the Court. Notice was mailed to all members of the Willis class on January 9, 1976. Pursuant to the terms of the Proposed Consent Decree and notice, any class member who objects to terms and conditions of the settlement may notify the Court and will have an opportunity to be heard on her objections. The parties have requested that the Court hold such a hearing on February 27, 1976. (See letter to Hon. Charles E. Stewart, Jr. and Hon. Richard Owen, dated February 5, 1976, a copy of which is attached hereto as Exhibit "E.")

16. On February 13, 1976, I received a copy of a notice of meeting, dated February 11, 1976, which was sent by Local 32J to all members of the Willis class, and only to members of the Willis class, stating in pertinent part:

"You will probably also receive, if you have not already, a different notice from the attorneys for Darlene K. Willis about a so-called 'CONSENT DECREE'. We strongly believe that this so-called 'CONSENT DECREE' would provide lesser terms and conditions than the agreement we negotiated for you and would take away some of the conditions you have enjoyed for years. Because we want you to understand this, we have called this VERY IMPORTANT MEETING for February 18, 1976 at which time your attorneys will explain the differences and how the Willis 'Consent Decree' benefits Willis and Allied at your expense.

Please be sure to attend this VERY IMPORTANT MEETING."

(A copy of the notice of meeting is attached hereto as Exhibit "F.")

17. Shortly after receiving this notice of meeting, I called Richard Alpern, of Halperin, Shavit, Scholer, Schneider & Eisenberg, attorneys of record for Local 32J in the Willis case. He confirmed to me that the phrase "your attorneys" in the notice referred to attorneys associated with Shea Gould.

18. The clear and obvious intention of the notice of meeting is to create opposition to the Willis Proposed Consent Decree by misrepresenting the true nature of the decree. There is no factual basis for the statement in the notice that the Willis settlement "would provide lesser terms and conditions than the agreement we negotiated for you and would take away some of the con-

ditions you have enjoyed for years." In fact, a reading of both agreements indicates that just the opposite is true. The Willis Proposed Consent Decree vindicates important legal rights and offers opportunities not available under the industry agreement. Specifically:

a. Under the Willis agreement members of the class covered only by BSL agreements will receive equal pay retroactive to October 1, 1975.

They would not be similarly covered under the industry agreement..

b. Under the Willis agreement, where male employees are paid for 40 hours of work on the basis of 37 1/2 hours actually worked, female employees will be paid on the same basis. The industry agreement does not provide for such equalization.

c. Under the Willis agreement, current female employees will have the opportunity, but will not be required, to transfer to formerly male jobs. To the extent that rights upon transfer are controlled by Allied, i.e., not in conflict with any provision of any collective bargaining agreement, such transfer shall be without loss of seniority or other rights, privileges and benefits. This vindicates, as to the employer, the right to equal access to job opportunities guaranteed by Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e, et seq. The industry agreement does not speak to the issue at all. The extent to which rights upon transfer are restricted by the collective bargaining agreements, and the legality of such restrictions under Title VII, as well as the issue of merger of the sex-segregated unions, is one of the unresolved issues between plaintiff and the unions.

d. Under the Willis agreement, the wage equalizations, equal access and other provisions referred to above have the force and effect of a permanent injunction running to the benefit of Allied employees. In contrast, the industry agreement, like all collective bargaining agreements, will expire on a specified date, at which time the terms will be

subject to re-negotiation.

19. Nothing contained in the Willis Proposed Consent Decree deprives any member of the Willis class of any advantages allegedly available under the industry agreement, nor will any employee covered by the Willis decree receive any less advantageous terms and conditions of employment than those available under the industry agreement.

20. Based on the foregoing, affiant submits that the notice of meeting from Local 32J, in characterizing the Willis consent decree as "provid[ing] lesser terms and conditions of employment than the agreement we [Local 32J] have negotiated for you and would take away some of the conditions you have enjoyed for years," is a patent misrepresentation of the proposed settlement. The notice's call to a meeting at which "your attorneys will explain the differences and how the Willis 'Consent Decree' benefits Willis and Allied at your expense," is equally so, and promises more of the same. If this is allowed to continue, members of the Willis class may well be misled by such misinformation and misrepresentations, by reliance on counsel whose allegiance is at best divided between clients with conflicting interests, and by reliance upon a union who is the defendant in an action in which union members constitute the plaintiff class. As a result, members of the class may be persuaded to reject a beneficial settlement which, if they were fairly and truthfully informed, they would approve.

21. This baseless attempt to discredit, and thereby to destroy, the Willis settlement, to the disadvantage of the Willis class can only be read as a further indication of the extent of Shea Gould's and Local 32J's conflict of interest, which will protect the union at the expense of its members. In view of the total absence of factual support for the allegations of the notice of meeting, their actions can only be viewed as a continuation of the on going effort to destroy the Willis settlement in retaliation against plaintiff for having initiated and pursued this matter since her 1971 EEOC charge, for obtaining a beneficial settlement with the employer without

releasing claims against the union, and for pursuing claims against Local 32J not resolved by the Proposed Consent Decree (e.g., merger of sex-segregated unions and equal access claims), evidently to coerce plaintiff to abandon those claims.

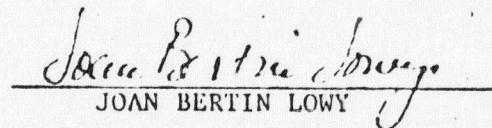
22. Affiant believes that all of the foregoing reveal clearly and unequivocally that, not only is Shea Gould in an untenable professional position by virtue of its continuing representation of clients with adverse interests in the same dispute, but also that the conflict of interest has caused them and Local 32J to behave in such a fashion as to threaten immediate and irreparable injury to plaintiff and the class in Willis and to plaintiffs in the Nurse cases. Without the relief requested herein, such immediate and irreparable harm will result if Local 32J and Shea Gould are permitted to continue to perpetuate misrepresentations and misinformation regarding the terms and conditions of the agreements, and if advantageous settlements are thereby destroyed.

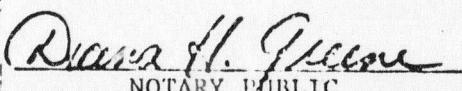
23. No prior application for the relief requested herein has been made.

24. Plaintiff's attorneys notified attorneys for all parties by telephone of their intention to make this application on February 17, 1976, at approx 1 pm, and invited them to attend.

WHEREFORE, affiant respectfully requests that the Court grant the relief sought herein along with such other and further relief as may be just and proper.

Signed and Sworn to before me  
this 17th day of February, 1976.

  
JOAN BERTIN LOWY

  
NOTARY PUBLIC  
DIANA H. GREENE  
Notary Public, County of New York  
1976  
Clerk of the County  
Commissioned Notary Public 1971

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY FOR EMPLOYMENT STANDARDS  
WASHINGTON, D.C. 20210



September 10, 1975

Mr. Joseph J. Baumann  
President  
Local 32J  
237 East 36 Street  
New York, New York 10037

Dear Mr. Baumann:

I have received a copy of the letter dated July 9, 1975 sent to you by Mr. Frank B. Moreurio of my New York office. Although Mr. Moreurio and myself met, at their request, with some of the various parties involved in these private actions brought under Section 16(b) of the Fair Labor Standards Act, I had not seen nor reviewed the proposed settlement agreement at the time of Mr. Moreurio's referred-to response. Having now reviewed that proposed settlement myself, and having consulted with the Solicitor of Labor, I wish to advise you that because the letter dated July 9 is subject to interpretations which do not correctly state the Department's views, it cannot be relied upon or represented to the public or to the court as a correct statement of those views. Accordingly, I would appreciate your returning Mr. Moreurio's letter or indicating in some other manner your knowledge that it has been superseded by the instant letter.

I appreciate the interest of the parties in attempting to settle their differences out of court, and it is not the Department's policy to interfere with such private settlements. The Department does, of course, have the right to seek additional relief if that becomes necessary to its broader litigation program or if complaints are received from individual employees or from competitors. Specifically, the Department presently has one law suit and several investigations pending against National Kinney in other jurisdictions which it would not dispose of on terms similar to the private proposed settlement agreement.

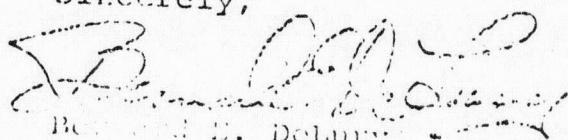
Our basic concern with the proposed agreement is that it appears to defer ultimate compliance for 3 years. Since the Equal Pay Act has been in effect for over 10 years, and since it granted a specific grace period, which expired in 1965, we believe and have always maintained that additional grace periods do not constitute compliance with the Equal Pay Act. On the other hand, an employer's corporate condition can be considered insofar as it may permit deferred payment

Page 2

of equal wages while financing is obtained, and it may be that this was the intent of the parties here. Such wages ultimately paid would, of course, include the period of deferral. Also, although here again we are unwilling to permit the parties to submit to binding arbitration the issue of "equal work."

It is not the policy of the Department of Labor to approve or disapprove private litigation settlements. However, should you desire further elaboration of the Department's views concerning equal pay matters, please do not hesitate to contact our Solicitor's office or the Wage-Hour Administrator.

Sincerely,



Bernard R. Delaney  
Assistant Secretary

N O T E: Due to Poor Quality of this copy, a retyped  
copy follows.

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE ASSISTANT SECRETARY FOR EMPLOYMENT STANDARDS  
WASHINGTON, D.C. 20210

September 10, 1975

Mr. Joseph J. Baumann  
President  
Local 32J  
237 East 36 Street  
New York, New York 10037

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I appreciate the interest of the parties in attempting to settle their differences out of court, and it is not the Department's policy to interfere with such private settlements. The Department does, of course, have the right to seek additional relief if that becomes necessary to its broader litigation program or if complaints are received from individual employees or from competitors. Specifically, the Department presently has one law suit and several investigations pending against National Kinney in other jurisdictions which it would not dispose of on terms similar to the private proposed settlement agreement.

Our basic concern with the proposed agreement is that it appears to defer ultimate compliance for 3 years. Since the Equal Pay Act has been in effect for over 10 years, and since it granted a specific grace period, which expired in 1965, we believe and have always maintained that additional grace periods do not constitute compliance with the Equal Pay Act. On the other hand, an employer's economic condition can be considered insofar as it may permit deferred payment

Exhibit "D" - Part I

[Retyped]

Page 2

of equal wages while financing is obtained, and it may be that this was the intent of the parties here. Back wages ultimately paid would, of course, include the period of deferral. Also, although here again we are unclear as to the intent of the parties, we do not believe that the law permits the parties to submit to binding arbitration the issue of "equal work."

It is not the policy of the Department of Labor to approve or disapprove private litigation settlements. However, should you desire further elaboration of the Department's views concerning equal pay matters, please do not hesitate to contact our Solicitor's office or the Wage-Hour Administrator.

Sincerely,

/s/ Bernard E. DeLury

Bernard E. DeLury  
Assistant Secretary

## U.S. DEPARTMENT OF LABOR

OFFICE OF THE SOLICITOR

WASHINGTON, D.C. 20210



NOV 12 1975

Mr. Howard Lichtenstein  
Proskauer, Rose, Goetz &  
Mendelsohn  
300 Park Avenue  
New York, New York 10022

Dear Mr. Lichtenstein:

This will reply to your letter to Secretary Dunlop, dated September 30 and to Mr. Dicker's letter to Judge Stewart, dated November 3. First, let me say that Assistant Secretary DeLury's letter of September 10 correctly states the Department's position and will not be withdrawn. However, the Department is more than willing to assist in whatever way we can in a settlement of the pending suits. Accordingly, we have discussed the issues with the other attorneys involved and we have suggested a meeting of all the parties on November 19, at 2 PM, in my office at 200 Constitution Avenue, N.W., Room S-2002.

If this meeting is successful, it is my hope that the parties can all agree on a letter to Judge Stewart advising him of the pendency of settlement discussions.

Sincerely,

William J. Kilberg  
Solicitor of Labor



SUPP. A 60  
**LOCAL 32J** SERVICE EMPLOYEES  
INTERNATIONAL UNION AFL/CIO

237-241 EAST 36th STREET • NEW YORK, N.Y. 10016 • (212) 685-4700

JOSEPH J. BAUMANN  
President & Business Manager  
  
DOLORES DRAPALA  
Secretary-Treasurer  
  
CHESTER W. BROWN  
Vice President  
  
DONALD F. MUMM  
Vice President  
  
LUCILLE P. SMITH  
Recording Secretary  
  
ANGELO A. D'CHRISTOFARO  
General Organizer

NOTICE OF IMPORTANT MEETING

February 11, 1976

TO ALL FEMALE CLEANERS, MEMBERS OF LOCAL 32J, EMPLOYED  
BY ALLIED MAINTENANCE CORPORATION UNDER THE REALTY  
ADVISORY BOARD AND BUILDING SERVICE LEAGUE AGREEMENTS

Dear Member:

Please be advised that a VERY IMPORTANT MEETING for all female cleaners, members of Local 32J, employed by Allied Maintenance Corporation under the RAB and BSL Agreements has been scheduled for:

DATE: WEDNESDAY, FEBRUARY 18, 1976  
TIME: 1:00 P. M.  
PLACE: MANHATTAN CENTER  
PROMENADE BALLROOM - (Main Floor)  
311 West 3<sup>4</sup> St. (Between 8th & 9th Aves.)  
New York City

By now you have received a notice from the Union about a Modified Agreement we reached with the Realty Advisory Board providing for equal pay, retroactive to 10/1/75 and other very substantial improvements. This Agreement will be submitted to the Federal Court for approval on February 17, 1976.

You will probably also receive, if you have not already, a different notice from the attorneys for Darlene K. Willis about a so-called "CONSENT DECREE". We strongly believe that this so-called "CONSENT DECREE" would provide lesser terms and conditions than the agreement we negotiated for you and would take away some of the conditions you have enjoyed for years. Because we want you to understand this, we have called this VERY IMPORTANT MEETING for February 18, 1976 at which time your attorneys will explain the differences and how the Willis "Consent Decree" benefits Willis and Allied at your expense.

Please be sure to attend this VERY IMPORTANT MEETING.

Fraternally,

Joseph J. Baumann  
President and Business Manager

Exhibit "F"

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2 UNITED STATES DISTRICT COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 -----x  
5 DARLENE K. WILLIS, individually and :  
6 on behalf of all others similarly :  
7 situated,

8 Plaintiff, : 75 Civ. 935

9 - v s - : 74 Civ. 4889

10 ALLIED MAINTENANCE CORPORATION, :  
11 et al., :

12 Defendants.

13 MARIA NURSE, et al., :  
14 Plaintiffs,

15 - v s -  
16 DARLENE K. WILLIS, individually and :  
17 on behalf of all others similarly :  
18 situated,

19 Proposed plaintiff  
20 Intervenor, :

21 - v s - :

22 ALLIED MAINTENANCE CORPORATION, et al., :

23 Defendants. ;

24 Before : -----x

25 HON. CHARLES E. STEWART, JR.,  
26 District Judge.

27 New York, N. Y.  
28 February 17, 1976 - 4:55 p.m.

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## 2 Appearances:

3 For Plaintiff and Proposed Plaintiff Intervenor:

4 JOAN BERTIN LOWY, ESQ.,  
5 ISABELLE KATZ PINZLER, ESQ.,  
6 ROBERT B. ROBERTS, ESQ.,  
7 DIANA GREENE, ESQ.,  
8 (National Employment Law Project, Inc.)  
9 423 W. 118th Street,  
New York, N. Y. 10027.

10 MARGARET DU. B. AVERY, ESQ.,  
11 For Defendant Bank of America.

12 EMANUEL DANNET, ESQ.,  
13 Attorney for Allied Maintenance Corporation.

14 MARVIN DICKER, ESQ.,  
15 Attorney for Deft. The Realty Advisory  
16 Board on Labor Relations and for certain  
17 other defendants in the Nurse case.

18 HAROLD LEVISON, ESQ.,  
19 Attorney for Defendant Chemical Bank in the Nurse case.

20 MELANIE NUSSDORF, ESQ.,  
21 Attorney for the United States Department of Labor.

22 HAROLD G. ISRAELSON, ESQ.,  
23 Attorney for Defendant Local 32-B Service Employees,  
24 International Union AFL-CIO.

25 HENRY MAYER, ESQ.,  
Attorney for The Building Service League.

ROBERT SCHANZER, ESQ.,  
Attorney for Defendant Allied Maintenance.

WILLIAM FINNERAN, ESQ.,  
Attorney for Plaintiffs in Nurse action.

SAMUEL L. SCHOLER, ESQ.,  
Attorney for Local 32-J in Willis Action.

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2 [In open court:]

3 THE COURT: Good afternoon. Before we get  
4 started I would like to apologize for keeping you waiting  
5 so long. As inevitably happens the prior proceeding we  
6 started at two o'clock slopped over and I had to keep you  
7 waiting.

8 Now, I have an opinion in the application for a  
9 class action, and another opinion in the motion to intervene,  
10 and I would like to read those to you before we go any  
11 further.

12 On the motion for a class action, plaintiff  
13 Willis moves for a class action determination pursuant to  
14 Rule 23(a) and 23(b)(2) of The Federal Rules of Civil  
15 Procedure.

16 We must determine whether the class, first,  
17 is so numerous that joinder is impractical; second,  
18 whether there are questions of law or fact common to the  
19 class; third, whether the claims of the representatives  
20 are typical of those of the class and; four, whether the  
21 representative will fairly and adequately protect the  
22 class interests.

23 In addition, if we do find this action to be  
24 appropriate for class action status, we must determine  
25 whether the defendant Allied has acted upon grounds generally

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2 applicable to the class so that final injunctive or  
3 declaratory relief would be appropriate with respect to  
4 the class as a whole.

5 Plaintiff requests that we define the class --  
6 you understand I am talking about the Willis case -- as  
7 all female cleaning and maintenance workers who have  
8 been employed or are currently employed and who in the  
9 future may be employed by defendant Allied Maintenance  
10 Corporation or its subsidiaries ("Allied") subject to  
11 labor agreements between defendant unions and defendants  
12 Building Service League ("BSL") or Realty Advisory Board  
13 on Labor Relations, Inc. ("RAB").

14 The class, estimated to be in excess of 1300  
15 is clearly large enough to meet the requirements of  
16 numerosity. See Generally 3 B. Moore, Federal Practice,  
17 Paragraph 23.05, 2nd Edition, 1969.

18 Allied argues that the number of potential  
19 class members is too small to be numerous. First, Allied  
20 contends that releases from liability sought or obtained  
21 in separate equal pay actions affect the number of members  
22 to be certified here.

23 Those releases provide, and now I am quoting,  
24 "I also waive, discharge and release all claims which I  
25 may have against my present or former employers for any

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2 alleged violation of law with respect to equal pay,  
3 including but not limited to, the Equal Pay Act and Title  
4 VII of the Civil Rights Act of 1964, except for the claims  
5 which the employers agreed to pay in accordance with the  
6 terms of the settlement agreement."

7 We cannot at this stage agree with Allied that  
8 the releases defeat numerosity, but rather reserve the  
9 question of the effect of the releases. Compare Alexander  
10 v. Gardner-Denver Co., 415 U. S. 36 (1974).

11 Mr. Reporter, you have this to check the  
12 citations, and so forth.

13 Second, Allied contends that any class cer-  
14 tified here must be limited to those women who work at  
15 plaintiff Willis' "establishment", which it defines as  
16 limited to the building in which she works, 24 State  
17 Street, Section (d)(1) of the Equal Pay Act.

18 Defendant Allied argues that the definition  
19 of "establishment" under the Equal Pay Act is applicable  
20 to a Title VII action by virtue of Section 703(h) of the  
21 Civil Rights Act. 703(h) provides, in pertinent part,  
22 that:

23 "It shall not be unlawful practice under this  
24 Title for any employer to differentiate upon the basis  
25 of sex in determining the amount of the wages or compensa-

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2 tition paid or to be paid to employees of such employer if  
3 such differentiation is authorized by the provisions of  
4 Section 206(d) of Title 29."

5 Allied argues from this language that an  
6 unlawful employment practice under Title VII must also  
7 constitute a violation of the Equal Pay Act. Allied's  
8 brief at page 29. Because it believes that the Equal Pay  
9 Act applies, Allied argues that the definition of  
10 "establishment" under that Act, which has been narrowly  
11 construed, must be applied as a limitation in a Title  
12 VII action.

13 However, Section 703(h) says only that a  
14 practice authorized by the Equal Pay act cannot be an un-  
15 lawful employment practice under the Civil Rights Act.  
16 Schultz v. Wheaton Glass Co., 421 Fed 2d 259 (3d  
17 Circuit) cert. denied, 398 U. S. 905(1970). And quoting  
18 from the 3d Circuit, "Since both statutes serve the same  
19 fundamental purpose against discrimination based on  
20 sex, the Equal Pay Act may not be construed in a manner  
21 which by virtue of Section 703(h) would undermine  
22 the Civil Rights Act." 421 Fed. 2d at 266. Therefore,  
23 we find that the definition of establishment cannot  
24 limit the class here to those persons who work at 24  
25 State Street.

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2 Even if we were to agree that the definition  
3 of "establishment" under the Equal Pay Act was applicable  
4 to a Title VII suit, we would not reach Allied's conclusion  
5 that this suit would be limited to the one building.  
6 Rather, all 350 buildings in which the employees of  
7 Allied clean would come under a single establishment,  
8 Allied's central administration, which hires, assigns and  
9 supervises all the employees.

10 See Brennan v. GooseCreek Consolidated In-  
11 dependent School District, 74 Civ. 1485 (5th Circuit  
12 September 11, 1975); Brennan v. Board of Education,  
13 374 Fed. Supp. 817 (District of New Jersey, 1974.)

14 Clearly in her Title VII sex discrimination  
15 complaint, plaintiff has raised questions of law and fact  
16 common to the class she seeks to have certified. "A  
17 suit for violation of Title VII is necessaril a class  
18 action as the evil sought to be ended is discrimination  
19 on the basis of a class characteristic."

20 Bowe v. Colgate-Palmolive Co., 416 F. 2d 711,  
21 719 (7th Circuit 1969).

22 Also, plaintiff, as a female employee of Allied  
23 who alleges that she has suffered from the alleged  
24 discriminatory practices of defendants, states claims  
25 typical of the class. Defendant Allied argues that plaintiff

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2 Willis fails to meet the typicality requirement of  
3 Rule 23(a)(3) because Willis alleges that Allied has denied  
4 female employees the opportunity of working in heavy-duty  
5 cleaning positions.

6 Parenthetically we note that defendant recognizes  
7 the same argument is applicable to the common question of  
8 law or fact category, compare Hyatt v. United Aircraft  
9 Corp., 50 F.R.D. 242, 247, District of Connecticut, 1970,  
10 with White v. Gates Rubber Co., 53 F.R.D. 412, 415, District  
11 of Colorado, 1971.

12 Allied argues that "the vast majority of  
13 plaintiff's alleged class are not interested in performing  
14 the work in heavy-duty classification." Allied's brief  
15 at Page 41.

16 However, class action status does not depend  
17 upon the alleged desire of members of the class to exercise  
18 or to enforce their rights. See Norwalk CORE v. Norwalk  
19 Redevelopment Agency, 395 Fed. 2d 920, 937 (2d Circuit,  
20 1968; Eisen v. Carlisle and Jacquelin (Eisen II), this is  
21 391 Fed. 2d 555, at 563 2nd Circuit, 1968; Cortright v.  
22 Resor, 325 Fed. Supp. 797 Eastern District of New York,  
23 1971, reversed on other grounds, 447 Fed. 2d 245 Second  
24 Circuit 1971, cert. denied 405 U. S. 965, 1972.

25 Further, to the extent that Allied argues there

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2 are differences of opinion among the members of the class,  
3 that claim does not defeat class action status. See  
4 e.g. Rodado v. Wyman, 322 Fed. Supp. 1173, 1193-4,  
5 Eastern District of New York, 1970, affirmed 437 Fed. Sec.  
6 619, Second Circuit affirmed memorandum opinion 402 U. S.  
7 991, 1971.

8 In accord with the fourth criterion of Rule  
9 23(a) we think that plaintiff and her counsel will fairly  
10 and adequately represent the class. There is no question  
11 on the part of this Court, nor any question raised by  
12 defendant, of the excellence of plaintiff's counsel here.  
13 Further, plaintiff Willis in pursuing her claim of  
14 sex discrimination thorough years of EEOC administrative  
15 remedies and finally before this Court, has been, I  
16 quote, "a vigorous and tenacious plaintiff."

17 Dorfmann v. First Boston Corp., 62 F.R.D. 466,  
18 Eastern District of Pennsylvania, 1974. We think plaintiff  
19 and plaintiff's counsel meet the Rule 23(a) criterion to  
20 protect the class interests.

21 Finally, we think that this class action meets  
22 the relief requirements et forth in Rule 23(b)(2). Class  
23 claims seeking injunctive relief for descriminatory prac-  
24 tices fits within Rule 23(b)(2). See e.g., Robinson v.  
25 Lorillard Corp., 444 Fed. 2d, 791 at 802, 4th Circuit,

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2 1971, cert. dismissed 404 U.S. 1006, 1007.

3           Also, despite defendant Allied's argument,  
4 former employees may have an interest in obtaining injunc-  
5 tive relief as they "may desire to renew their employ-  
6 ment, if the discriminatory practices are terminated."

7           Wetzel v. Liberty Mutual Insurance Company, 508 Fed. 2d,  
8 239, 3d Circuit, 1975, cert. denied \_\_\_\_ U.S. \_\_\_\_

9 1975. And plaintiff's claim for back pay does not defeat  
10 a class under Rule 23(b)(2) as that claim is one for  
11 equitable relief under Title VII, Section 706(q), see  
12 Albemarle Paper Co., v. Moody, 43 U. S. Law Weekly,  
13 U.S.L.W., 4880, 1975, Arkansas Education Association v.  
14 Board of Education, 446 Fed. 2d 763, 768, 9th Circuit,  
15 1971; Robins v. Lorillard, Supra.

16           Based upon the above findings, we order that  
17 a class be certified in this action and that the class  
18 consist of all female cleaning and maintenance workers  
19 who have been employed, who are currently employed, and who  
20 in the future may be employed by defendant Allied Main-  
21 tenance Corporation or its subsidiaries ("Allied") subject  
22 to labor agreements between defendant unions and defendants  
23 Building Service League ("BSL") or Realty Advisory Board on  
24 Labor Relations, Inc. ("RAB").

25           Now, I also have an opinion that I would like

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2 to read to you which is a little shorter on the motion  
3 to intervene brought by the plaintiff in the Nurse case.

4 Plaintiff Willis has moved on behalf of herself  
5 and on behalf of the class which we have certified to in-  
6 tervene in the Nurse v. Allied Maintenance case 74 Civ.  
7 4889.

8 We think that intervention for purposes of  
9 reviewing and raising any and all objections to the set-  
10 tlement is proper both as of right under Rule 24(a)(2) of  
11 The Federal Rules of Civil Procedure and permissively  
12 under Rule 24(b).

13 We find the three prerequisites for intervention  
14 as of right to have been met. Those prerequisites are,  
15 (1), an interest relating to the property or transaction  
16 which is the subject of the action; (2), the possibility  
17 that the disposition of the action may impair or impede  
18 the proposed intervenor's ability to protect that interest;  
19 and, (3), inadequate representation of the movant's  
20 interest by the existing parties.

21 Movant and her class have a clear interest in  
22 the subject matter of the Nurse action since the settlement  
23 is industry-wide in character and will automatically run  
24 to the benefit of all local 32J members setting wages and  
25 the terms and conditions of employment.

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2                   Second, the clear possibility exists that the  
3 deposition of the Nurse action by the proposed settlement  
4 which includes the provision for release from liability  
5 for claims stated in the Willis action may impair the  
6 proposed intervenors' ability to protect that interest.

7                   Finally, we turn to the question of adequacy  
8 of representation. The Supreme Court in *Trbovich v.*  
9                   *United Mine Workers*, 404 U.S. 528 at 538 note 10, 1972,  
10                  stated that "the requirement of the Rule, that is Rule  
11                 24, is satisfied if the applicant shows that representation  
12                 of his interest may be inadequate, and the burden of  
13                 making that showing should not be treated as minimal."

14                  We think a sufficient showing was made by virtue  
15                 of the fact that the law firm of Shea Gould has acted as  
16                 general counsel to Local 32J, a fact assumed by Shea Gould  
17                 in the Hecker affidavit, Paragraph 11, which representa-  
18                 tion included negotiating the collective bargaining  
19                 agreements which form the basis for these actions as well  
20                 as representing the union before the EEOC in the Willis  
21                 complaint and now has represented plaintiffs in bringing  
22                 the Nurse action.

23                  At the time suit was brought in Nurse it was  
24                 necessary for plaintiff's counsel Shea Gould to advise  
25                 plaintiffs on how best to enforce their rights. That

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2 advice included a decision on whether or not to proceed  
3 against the very union to which Shea Gould is general  
4 counsel. Although the Hecker affidavit states that the  
5 "decision to advise the members to proceed under the  
6 Equal Pay Act rather than to proceed by a class action  
7 under Title VII was not designed to protect Local 32J,  
8 referring again to Paragraph 11, we find the factors  
9 presented here on a possible conflict of interest clearly  
10 raise sufficient doubt about the adequacy of representation  
11 to warrant intervention under Rule 24(a).

12 For the above reasons and because permissive  
13 intervention is clearly appropriate here as within the  
14 discretion of the Court, we grant intervention.

15 All right, now I guess the next thing is the  
16 order to show cause. Who wants to speak about that?

17 MRS. LOWY: Your Honor, my name is Joan Bertin  
18 Lowy, and I am one of the attorneys for Darlene Willis.

19 THE COURT: Mrs. Lowy, could you speak up a  
20 little?

21 MRS. LOWY: Surely. I am sorry.

22 Miss Willis' application for an injunction  
23 requiring that Shea, Gould and Local 32-J retract and  
24 correct misinformation which they have circulated to members  
25 of the Willis class regarding proposed consent decree in

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2 Willis v. Allied Maintenance Corporation.

3                 Also before the Court in the order to show cause  
4                 is an application for disqualification of Shea, Gould as  
5                 counsel to the plaintiffs in Nurse v. Allied Maintenance  
6                 on the ground of conflict of interest. And also before  
7                 the Court is an application for temporary relief pending  
8                 the Court's final decision on this matter.

9                 The facts behind this application are  
10                relatively simple and are undisputed. Shea, Gould has  
11                since 1959 --

12               THE COURT: Mrs. Lowy, I think I know the facts.  
13               Unless you have something new to tell me --

14               MRS. LOWY: No, I have nothing new to submit.  
15               The problem, though, now, your Honor, is the notice which  
16               is attached to my affidavit as Exhibit F. This is the  
17               issue which has really forced this crisis to the point  
18               where it is at now, and I would like to call your attention  
19               to the --

20               THE COURT: Yes, I have read that.

21               MRS. LOWY: All right.

22               THE COURT: That is tomorrow morning, isn't it?

23               MRS. LOWY: It's tomorrow at one o'clock.

24               THE COURT: All right.

25               MRS. LOWY: And plaintiff submits that if

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2 this is permitted to continue, if these misrepresentations  
3 are not retracted serious irreparable harm will result  
4 to plaintiffs --

5 THE COURT: All right. Who wants to talk to  
6 this?

7 MR. FINNERAN: Your Honor, we represent the  
8 plaintiffs in the Nurse action, and Mr. Scholer here  
9 represents plaintiff 32-J in the Willis action.

10 THE COURT: Mr. Finneran, am I correct that  
11 in the Nurse action you are a third party defendant, or,  
12 your client is?

13 MR. FINNERAN: 32-J is, your Honor.

14 THE COURT: Am I correct that you represent  
15 32-J?

16 MR. FINNERAN: Not in that action, your Honor.

17 THE COURT: Beg pardon?

18 MR. FINNERAN: Not in that action, your Honor.

19 THE COURT: Now what about the Willis action,  
20 who do you represent in that, if anybody?

21 MR. FINNERAN: Nobody, your Honor.

22 THE COURT: Am I correct that you are general  
23 counsel to 32-J, your firm?

24 MR. FINNERAN: Yes, sir.

25 THE COURT: Did you have anything to do with

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2 any of 32-J's agreements with the plaintiffs in these  
3 various actions? I don't mean you personally, but your  
4 firm.

5 MR. FINNERAN: Yes, of course. Of course,  
6 your Honor. Yes, we did.

7 THE COURT: All right, go ahead.

8 MR. FINNERAN: Notwithstanding the rendering  
9 of your Honor's previous decision and opinions, we believe  
10 that the proposed request of Miss Willis', the normal  
11 procedure in an order to show cause is to set it down for  
12 a time and date certain. Do you want to argue it now?

13 MR. FINNERAN: I would rather not, your Honor,  
14 but it would appear --

15 THE COURT: There is a TRO in it which I  
16 would be disposed to grant.

17 MR. FINNERAN: If your Honor disposes and  
18 believes that it should grant the TRO, then we believe  
19 that that would cause irreparable injury to our law firm,  
20 but more importantly, your Honor, to the women who we  
21 represent. We believe as a right of free speech, and  
22 more importantly based upon your Honor's instructions at  
23 our January 27th conference, meeting, when we tried to  
24 outline to his Honor explicitly why we considered the  
25 proposed Willis decree and consent to it to be improper,

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2 I believe, and we could not secure the exact reporter's  
3 copy today, your Honor instructed us at that time to  
4 speak to our clients and explain to them why we thought  
5 the possibility of the Willis action would infringe upon  
6 their rights.

7 All we are doing, your Honor, is following your  
8 Honor's directive.

9 THE COURT: Well, I think I was --

10 MR. FINNERAN: As of January 27th.

11 THE COURT: Mr. Finneran, I believe I was a little  
12 bit more difficult with you than you so kindly put it.  
13 I think I wasn't very much disposed to hear you at all.

14 MR. FINNERAN: That's correct, your Honor.

15 And you told me that I had a right to convey my thoughts  
16 to my clients.

17 THE COURT: Yes.

18 MR. FINNERAN: Which I sincerely believed that  
19 I had. And I don't believe that I can or should be  
20 restrained from conveying what I believe to be the effect  
21 of the Willis order in losing particular rights that my  
22 clients have, I don't think I should, I don't believe  
23 you have the authorization to restrain me from freely  
24 speaking to my clients on this particular situation.

25 What is proposed, your Honor, is bizarre, you

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2 unique and unusual.

3 THE COURT: I know it is. And I am reluctant  
4 to do it because it is bizarre. On the other hand, I  
5 think I can restrain you if only as an officer of the  
6 Court from engaging in what I think is unethical.

7 MR. FINNERAN: Your Honor, as to that question  
8 I do believe anything that we have performed --

9 THE COURT: I didn't mean that in any pejorative  
10 sense, Mr. Finneran. We all get into situations where we  
11 are confronted with all kinds of imponderables, and so  
12 I want you to know I don't have any notion that anything  
13 that you are suggesting is improper, motivated by any base  
14 motives. I just think you are trying to do your job as  
15 a lawyer as best you can.

16 MR. FINNERAN: That's absolutely correct, your  
17 Honor, but I think that you have a further obligation as  
18 to me and as to these women. Especially with the  
19 mandated time period that is set forth in a decree where  
20 under No. 1 they have to notify you within 15 days of  
21 an objection and whereas, No. 2, they have to then sub-  
22 sequently opt out, but if you restrain me or 32-J or  
23 anyone from speaking to these women you are precluding  
24 them from having an opportunity to --

25 THE COURT: No, I am not apt to do that.

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2 MR. FINNERAN: Yes, your Honor, you are.

3 THE COURT: No, not from speaking with them.

4 MR. FINNERAN: If your Honor will look at the  
5 order your Honor will see this order is so broad and  
6 flagrant in what it purports to do that it will prevent  
7 the women in any manner, shape or form from being timely  
8 informed as to what would be another consideration as to  
9 the effect of the Willis action.10 In other words, what the order purports to do,  
11 your Honor, is muzzle me, muzzle counsel to 32-J --12 THE COURT: I get the same from the PRO, and  
13 I am not sure all the words are right, but what the PRO  
14 would do is to prevent you from misrepresenting, and I  
15 would suppose that you wouldn't object to that because  
16 I know you weren't going to misrepresent to begin with.17 MR. FINNERAN: Then there is no need for an  
18 order, your Honor. However, I would submit to your Honor,  
19 okay, that I would be most delighted if your Honor would  
20 appoint anyone to sit next to me or review what we would  
21 present to our clients.22 THE COURT: Mr. Finneran, you know I can't  
23 do that.24 MR. FINNERAN: Well then, your Honor, what  
25 you are really doing then is effectively denying my right

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2 of free speech. But forgetting it you see lined up here  
3 14 people, let's say, looking to muzzle me -- 13 people  
4 lined up to muzzle me.

5 THE COURT: You have got one friend.

6 MR. FINNERAN: Thank you. Now, who is going  
7 to --

8 MR. ISRAELSON: I could have had much more  
9 serious remedies for him.

10 MR. FINNERAN: Who is going to tell the women  
11 what if anything the other argument is as to this proposed  
12 consent decree so that they can timely object?

13 THE COURT: Their counsel, I would suppose.

14 MR. FINNERAN: That is me.

15 THE COURT: They feel they need counsel.

16 MR. FINNERAN: That is me.

17 THE COURT: How can you represent the union and  
18 them?

19 MR. FINNERAN: I don't represent the union,  
20 because your Honor when this very question arose we  
21 stepped out from representing the union because we would  
22 anticipate there would be a day like this. And to avoid  
23 a potential conflict of interest we said we cannot rep-  
24 resent the union, we requested that they get separate  
25 counsel who is here.. So we don't represent the union.

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2 We represent the people.

3 Now, the system would like to stifle any  
4 presentation to the people of what we believe to be a  
5 detrimental order to the people.6 THE COURT: You know, this is the thing that I  
7 am mostly concerned about.8 MR. FINNERAN: Your Honor, I don't mind being  
9 tied and chained, I don't mind being kicked in the head.  
10 I really don't. But I submit to your Honor that I just  
11 beyond the wildest expectations can't see how this Court  
12 can prevent those people from hearing another view.13 THE COURT: Yes, well, I don't want to prevent  
14 that.15 MR. FINNERAN: Well, that's the effect of this  
16 order.17 THE COURT: What I am concerned about, Mr.  
18 Finneran, is I want to hear another view from a source  
19 which is entirely objective.

20 Mrs. Lowy?

21 MRS. LOWY: If I may respond to a couple of the  
22 points Mr. Finneran said, he has ignored the fact that  
23 this Court has ordered a form of notice to be sent to  
24 all members of the Willis class which, pursuant to your  
25 Honor's approval, contains a full, fair and adequate

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2 explanation of the Willis agreement.

3 It also provides sources of information for  
4 any woman who misunderstands, who wants more information,  
5 who is confused. Those sources of information are my  
6 organization, or the Equal Employment Opportunity  
7 Commission.

8 We also know that the women have been sent a  
9 notice by Shea, Gould and 32-J indicating that they can  
10 call Shea, Gould on the phone if they want to call them  
11 on the phone to get information. There are plenty of  
12 sources of information available to these women. There  
13 is a hearing established under our proposed consent decree  
14 at which any of the concerns which any of the women have  
15 can be resolved.

16 It seems to me that the women are more than  
17 adequately protected under our agreement. None of these  
18 protections are present in the industry agreement. The  
19 women are entitled to revoke if they choose, but there  
20 is no hearing, there is no opt out provision, there is  
21 nothing of that sort.

22 Not only that, Mr. Finneran insists on re-  
23 ferring to these women as his clients, and he is ignoring  
24 the fact that today this Court had certified the class in  
25 the Willis action so while there was a presumption

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5           that a class action existed since the filing of the  
6           complaint as a class action, now that presumption has  
7           become a certainty.

8           Finally Mr. Finneran is ignoring the presence  
9           of the Department of Labor and Equal Employment Oppor-  
10          tunity Commission even if we had some interest in this,  
11          which we do not, we are a public law firm, the Department  
12          of Labor and the EEOC have been involved and have both  
13          indicated that there is absolutely no foundation to the  
14          charges made by Mr. Finneran that the Willis decree pro-  
15          vides lesser terms and conditions than the industry agree-  
16          ment, or is disadvantageous in any way to the Willis  
17          class.

18           THE COURT: Who represents the Department of  
19          Labor ?

20           MISS NUSSDORF: I do, your Honor. Melanie  
21          Nussdorf. Although we are not a party in this case,  
22          at the request of the parties we made every effort to  
23          facilitate settlement in both the industry case and in the  
24          Willis case. I believe that the settlement from the  
25          proposed decree in the Willis case is not substantially  
              different from the industry settlement, and I believe  
              that it does not opt to abrogate rights under the col-  
              lective bargaining agreement that I know the union is

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2 concerned about.

3 MR. FINNERNAN: Your Honor, that's the whole  
4 issue here. Melanie Nussdorf of the Labor Department  
5 believes --

6 THE COURT: Wait, please.

7 Miss Nussdorf, I am not quite sure, however,  
8 what your position is.9 MISS NUSSDORF: My position in the context of  
10 these cases?

11 THE COURT: Yes.

12 MISS NUSSDORF: The industry-wide settlement  
13 in its escrow agreement contains a provision that requires  
14 the approval of the Department of Labor. When they  
15 originally brought the agreement to us we were made aware  
16 of the Willis action. At that time we made it clear to  
17 all of the parties that we could not approve an industry-  
18 wide settlement which could possibly deprive the women  
19 who work for Allied of rights which Miss Willis was  
20 raising on their behalf.21 They asked us to act as an honest broker,  
22 let's say, to facilitate a settlement to bring the parties  
23 together and reach an agreement that would not be in  
24 violation of the Equal Pay Act. We did so. We reached  
25 agreement.

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2 Mr. Dannet for Allied and Miss Pinzler, Miss  
3 Willis and the 32-J, and I guess there are about 76 other  
4 Equal Pay Act cases. In that light we have helped to  
5 draft the Willis consent decree the presence at most  
6 settlement negotiations since November.

7 THE COURT: You were present before me a  
8 little while ago. What about Nurse, what do you know  
9 about that lawsuit?

10 MISS NUSSDORF: Nurse is a private 16(b) case,  
11 and in the 16(b) case Miss Nurse is the named plaintiff  
12 and as I understand it there are a good many other women  
13 who have opted into the suit because there are no class  
14 actions under the Equal Pay Act.

15 That case is part of the industry-wide set-  
16 tlement, and I believe it will be settled pursuant to that  
17 agreement which is ready to be heard by the Court hopefully  
18 at the end of this month.

19 What I do know about the agreement substan-  
20 tively is that it brings the employer into present  
21 compliance with the Equal Pay Act base for payment of back  
22 wages and while the Department of Labor is not --

23 THE COURT: Are you telling me what the  
24 defendant's position on that is now?

25 MR. NUSSDORF: No, sir, I am not. The

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2 Department of Labor's position is we will not approve it  
3 until both cases can get the approval of the Court.

4 MR. FINNERAN: Your Honor, can I speak now?

5 THE COURT: I interrupted Miss Lowy.

6 MRS. LOWY: If I may, your Honor, Miss  
7 Nussdorf made a statement I think that we have some support  
8 for the proposition she made that the decree does not --  
9 the Willis decree does not in any way undermine any  
10 right guaranteed in the collective bargaining agreement.

11 We believe that this is one hundred per cent  
12 clear from the language of the decree itself. However,  
13 to resolve any possible confusion over that we have today  
14 with the attorney for Allied executed the following  
15 memorandum of understanding:

16 "It is the understanding and intent of the  
17 undersigned parties, by their counsel, that no provision  
18 of the proposed consent decree herein requires or authorizes  
19 Allied to act in derogation of any rights, privileges  
20 or benefits secured to its female cleaning and maintenance  
21 employees by the provisions of any collective bargaining  
22 agreement."

23 Now, that is our memorandum of understanding.  
24 I think that that clarifies any possible confusion.  
25 However, I would like to call to your Honor's attention

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2 the fact that the decree does state no provision of this  
3 decree shall be construed so as to decrease any employee's  
4 wages, benefits or other form of compensation.

5 THE COURT: Read that last part again. Say that  
6 again.

7 MRS. LOWY: No provision of this decree shall  
8 be construed so as to decrease any employee's wages,  
9 benefits or other form of compensation.

10 Our decree, of course, is not a collective  
11 bargaining agreement, it does not speak to issues which  
12 are resolved from the collective bargaining process.

13 Our decree is only the settlement of a  
14 lawsuit. However, if this memorandum of understanding,  
15 if I may hand a copy to your Honor, it will clarify  
16 things --

17 THE COURT: Yes, go ahead. I am not sure that  
18 takes care of all of Mr. Finneran's problems.

19 MR. FINNERAN: You know what it does, your  
20 Honor? It exactly highlights that why I have to speak  
21 to the people. Because why would Allied and Mrs. Lowy  
22 come today and sign that document, and why would they try  
23 to muzzle me in speaking with the people unless they  
24 were into some sort of situation whereby the people's  
25 rights would be denied?

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2 The real issue here is constitutional.

3 THE COURT: Let's hear Mrs. Lowy and then we  
4 will come back to you.5 MRS. LOWY: Your Honor, I think our papers state  
6 clearly why we believe that Mr. Finneran is not entitled  
7 to speak to the members of the Willis class.8 THE COURT: I have read your papers. If you  
9 have something else --10 MRS. LOWY: No, I would like to hear from Mr.  
11 Finneran in what respects he thinks he can substantiate  
12 the charges in this letter which is extremely inflammatory,  
13 which says, "We have called this very important meeting  
14 on February 18, 1976, at which time your attorneys will  
15 explain the differences and how the Willis consent decree  
16 favors Willis and Allied at your expense."

17 MR. FINNERAN: Your Honor, if I may proceed.

18 THE COURT: Yes.

19 MR. FINNERAN: First of all I must get back  
20 to one paramount issue. Because you have been most kind  
21 to me in your relationship as to whether there is a  
22 conflict, but of course as an attorney you are vitally  
23 concerned about that, and I want to state to you and for  
24 the record that whenever there appeared to be a potential  
25 conflict of interest we demanded that the union bring in

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2 a separate law firm because we wanted those rights par-  
3 ticularly represented and the peoples' rights particularly  
4 represented. So that's No. 1.

5 But, No. 2, your Honor, I don't believe that  
6 you have a right to restrain me whether I represent the  
7 people or whether I don't represent the people. I don't  
8 think you have a right to restrain me whether I am going  
9 to tell accurately or inaccurately the consent decree,  
10 because I even have the right possibly to tell --

6 11 THE COURT: I think I do, Mr. Finneran.

12 MR. FINNERAN: Well, let me go --

13 THE COURT: And the reason I think I do is  
14 normally I have no right to restrain anybody from exer-  
15 cising his right of free speech.

16 MR. FINNERNAN: That's correct, your Honor.

17 THE COURT: I have the right to maintain order  
18 and due process, if you want to put it that way, in the  
19 conduct of the affairs of the officers of this Court.

20 MR. FINNERAN: Correct, your Honor.

21 THE COURT: And if I think an officer of this  
22 Court, a lawyer, is engaging in unethical conduct, I think  
23 I have the right at least temporarily and in a full  
24 hearing to restrain him. My problem at the moment, Mr.  
25 Finnernan, is I haven't the slightest desire to restrain

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2 you from any of your constitutional rights, and you  
3 know darned well I can't. I am very disturbed about  
4 the situation that you are in. It seems to me you are  
5 in a situation where you are arguably at least at this  
6 point, on both sides of the fence.

7 I would like to hear a lot more about that  
8 than I want to hear this afternoon. On the other hand,  
9 it seems to me that the order which the plaintiffs have  
10 proposed to me says no more than that you have got to  
11 do what you have got to do as a lawyer. That is that you  
12 don't misrepresent anything.

13 MR. FINNERAN: Well, first of all I wouldn't,  
14 your Honor.

15 THE COURT: I know that, but that doesn't  
16 mean I shouldn't enter the order anyway.

17 MR. FINNERAN: Well, yes, it does, your Honor.

18 THE COURT: As you know, Mr. Finneran, many  
19 times orders are entered which require people to do things  
20 that they are going to do anyway. But that doesn't mean  
21 the order shouldn't be entered.

22 MR. FINNERAN: No, but, your Honor, it's  
23 a little different in this instance because of the time  
24 period --

25 THE COURT: Now tell me, Mr. Finneran, why

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2 you think there is not a conflict here.

3 MR. FINNERAN: Because I don't represent 32-J.

4 THE COURT: That is the beginning. What else?

5 You mean that is the beginning and the end?

6 MR. FINNERAN: That's the beginning.

7 THE COURT: As I understand it your firm  
8 represents 32-J on a continuing basis and that you have  
9 negotiated the collective bargaining agreements which are  
10 before the Court and in this particular situation where  
11 you have got a situation in which you are representing  
12 individual members of your union, so to speak, you have  
13 withdrawn as counsel for the union and retain somebody  
14 else.15 That doesn't seem to me, Mr. Finneran, to mean  
16 that you don't have a conflict. It seems to me you do.17 MR. FINNERAN: Let me back in the other way,  
18 your Honor, because what you are doing is you are backing  
19 me into a corner and pushing me out the window.20 Now let me go to the other side of the room  
21 where maybe I am at the door. First of all, let's look  
22 at the order. Let's leave Finneran and Shea, Gould out  
23 in the first instance. If you look at the order, it is  
24 hereby ordered that the pending hearing and determination  
25 of this matter, defendant Local 32-J and its general

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2 counsel Shea, Gould and all attorneys associated therewith,  
3 their agents, employees and all persons in active concert,  
4 participation with them are restrained from exerting  
5 pressure or influence of any kind or any manner either in  
6 writing or orally upon members of the Willis class in an  
7 effort to persuade or coerce or mislead them into opposing  
8 the Willis proposed consent decree currently pending  
9 before the Court restrained from characterizing said  
10 proposed decree in any fashion so as to misrepresent to  
11 the members, and so forth, now in other words the whole  
12 world is restrained --

13 THE COURT: No, the whole world isn't restrained.

14 MR. FINNERAN: [continuing] -- from speaking  
15 to the women.

16 THE COURT: I take it that defendant Local 32-J  
17 is put into the preamble of the ordering clause because  
18 the letter, under the letterhead of Local 32-J, says,  
19 "Our counsel will talk to you."

20 MR. FINNERAN: It says, "Your counsel will  
21 talk to you. Your attorneys." We.

22 THE COURT: Yes.

23 MR. FINNERAN: Not their counsel, me.

24 THE COURT: I don't know, maybe Local 32-J  
25 ought not to be restrained. Maybe just you ought to be

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2 restrained.

3 MR. FINNERAN: I think, your Honor, in the first  
4 instance, and I think the gentleman to speak here as  
5 their counsel, that is a very serious question, and I  
6 think he should speak on that question.

7 THE COURT: It seems to me, Mr. Finneran,  
8 we are facing a different situation from what we were  
9 facing an hour ago. There is now a class I take it all  
10 of the plaintiffs in the Nurse action are members of the  
11 class, they have their class representatives, if they  
12 don't like the class they can consult their own counsel.  
13 I don't think they need any help on this from Local  
14 32-J, either from you or from the local. I think they have  
15 got to decide who they want to talk to.

16 MR. FINNERAN: But maybe your Honor might be  
17 wrong. That's the risk that we face here.

18 THE COURT: Yes, I know well that is the risk  
19 that all of us face.

20 MR. FINNERAN: And we have fifteen days to  
21 decide it within, your Honor.

22 THE COURT: Everybody is likely to do the wrong  
23 thing. Even judges do the wrong thing.

24 MR. FINNERAN: That's correct, your Honor.  
25 That is why in fifteen days if they don't have an

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2 opportunity to find out, they are dead. And items that  
3 they have striven for --

4 THE COURT: No, you know as well as I do --

5 MR. FINNERAN: (continuing) -- for years  
6 will be denied them.

7 THE COURT: You know as well as I do, Mr.  
8 Finneran, that if it turns out that the 15 days isn't  
9 going to give these people enough time somebody can come  
10 to me and say they need some more time. Nothing is so  
11 urgent that it has got to be done in fifteen days.

12 Yes?

13 MR. SCHOLER: My name is Scholer, your Honor.  
14 My firm represents 32-J in both of these cases, and as  
15 you know, a meeting is scheduled for one o'clock tomorrow.  
16 I really don't know what to do about the holding of this  
17 meeting insofar as it affects 32-J.

18 As I read this temporary restraining order I  
19 don't know just what we are supposed to do and what we  
20 are not supposed to do. We are supposed to retract and  
21 correct in a manner to be approved by the Court mis-  
22 information. I don't understand it.

23 THE COURT: I think Mr. Scholer, you ought to  
24 start first of all on the notion that there is a class.

25 MR. SCHOLER: All right.

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2 THE COURT: And the class is represented by  
3 certain people.

4 MR. SCHOLER: The class is also represented  
5 to a certain extent by 32-J, they are their bargaining  
6 agent.

7 THE COURT: The class is? The class is rep-  
8 resented by 32-J?

9 MR. SCHOLER: They are entitled to be informed.

10 THE COURT: I don't think the class is rep-  
11 resented by 32-J.

12 MR. SCHOLER: No, but I think they are en-  
13 titled to be informed by a union official.

14 THE COURT: I am not sure that is right.  
15 The class is something that the Court has created, Mr.  
16 Scholer. It is an artificial being. The people in the  
17 class have every right to be fully informed, but on the  
18 other hand I think their first source of information should  
19 be the class representatives.

20 As you know, both of you know, Courts have  
21 issued orders restraining counsel from getting in touch  
22 with class members. At least at the outset. Not for  
23 reasons which you gentlemen have in mind, but for reasons  
24 which are, I guess we would all agree, are totally im-  
25 proper. And I am not imparting those reasons to you.

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2 I am very concerned, Mr. Scholer and Mr. Finneran, about  
3 the fact, especially given the fact of a class that  
4 lawyers should approach these people, I don't mean in  
5 an improper way in terms of what is going to be said,  
6 but lawyers who are very close to the situation on both  
7 sides of the fence, and I am just disturbed about it.

8 I recognize in the Nurse lawsuit you are  
9 counsel and Mr. Finnerman is not. But that can't put  
10 aside the basic facts that Mr. Finnerman's law firm has  
11 represented 32-J, continues to represent them, if there  
12 is a continuing relationship.

13 MR. SCHOLER: I am addressing myself now  
14 to anything that Mr. Bauman, the president of the union  
15 might want to say to his members.

16 THE COURT: Also to get to that point I am a  
17 little disturbed at the notion that the members of the  
18 class, and I am not talking about members of the union  
19 now, I am talking about members of the class, maybe it  
20 is identical, but anyway because the members of the union  
21 are going to be subjected to a dissertation by Mr.  
22 Bauman, I am bothered.

23 Yes? Somebody over here?

24 MR. FINNERAN: May I continue, your Honor?  
25 Because I started it, let me continue.

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2 THE COURT: All right.

3 MR. FINNERAN: I don't believe that your Honor  
4 can order 32-J, or as this order purports to say, the  
5 world of the women, the world of the women, people they  
6 would look to, to say what does this mean and what does  
7 that mean. Don't forget the minority, a lot of them are  
8 foreign born, they look to find out what does it mean,  
9 I want to know. Now, I don't believe --

10 THE COURT: Well, that is a persuasive argument,  
11 Mr. Finneran.

12 MRS. LOWY: Your Honor, may I - -

13 MR. FINNERAN: Your Honor, please let me  
14 finish.

15 THE COURT: I am not interrupting you, I am  
16 just commenting.

17 MR. FINNERAN: Therefore that's what the order  
18 purports to order, and I don't believe in any stretch of  
19 the legal imagination that a Court could or should or  
20 would want to engage in an omnibus deprivation of the  
21 rights of these people of knowing in the short period of  
22 time. What's wrong with knowledge? What's wrong with  
23 knowing?

24 By the way, your Honor, what's wrong with another  
25 view? And possibly, your Honor, possibly, your Honor,

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2 there might be some credence and we believe there is  
3 substantial credence that the order posed in Willis does  
4 in fact deny rights for these people they sweated blood  
5 for many, many years. That's No. 1.

6 THE COURT: Well, all right, I gather that that  
7 may be a possibility. I had not understood that it was  
8 likely to happen that way. Go ahead.

9 MR. FINNERAN: That's correct, your Honor.  
10 They are going to lose the right to extra pay which we  
11 struggled for for years. This is another view, your  
12 Honor, and that's what we are trying to portray to you.

13 THE COURT: Let's not argue that now, Mr.  
14 Finneran. Either I have been misled or I have a different  
15 view of what is happening than you do. I would like to  
16 hear from Mrs. Lowy, then I would like to take a very  
17 short recess.

18 MRS. LOWY: Thank you, your Honor.

19 First of all I think that the Court clearly  
20 has authority under Rule 23 to control communications  
21 between --

22 THE COURT: I have no doubt about that.

23 MRS. LOWY: [continuing] -- between adverse  
24 parties.

25 THE COURT: I think it needs to be.

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2 MRS. LOWY: That's correct, your Honor. This  
3 is patently, this notice, a communication between adverse  
4 parties. The union has an axe to grind here. I believe  
5 that that axe is that they are angry because we have not  
6 resolved the claims against them.

7 THE COURT: I am well aware of that.

8 MRS. LOWY: I am almost speechless trying to  
9 respond to Mr. Finneran's statement that members of the  
10 Willis class will lose anything by virtue of this set-  
11 tlement.

12 THE COURT: Let's not get into that now.

13 MRS. LOWY: I think, in other words, that all  
14 of the charges made by Mr. Finneran are baseless. That  
15 the letter is baseless, and that the women must be  
16 protected from being misled and coerced.

17 THE COURT: All right, thank you very much,  
18 Mrs. Lowy.

19 Is there anybody else that wants to say anything?  
20 All right, let's take about five minutes.

21 [Recess.]

22 THE COURT: Mr. Finneran, this is the kind  
23 of a problem I don't particularly like to deal with,  
24 because it deals with not parties, but it deals to a  
25 certain extent with lawyers. It seems to me, Mr. Finneran,

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2 I take it these things are so that your firm has rep-  
3 resented Local 32-J as general counsel, that your firm  
4 has negotiated on behalf of 32-J the collective bargaining  
5 agreements which are the basis of these suits, and that  
6 your firm represented the union before the EEOC in the  
7 Willis matter, and frankly, these things lead me to  
8 conclude just this, that you should not be representing  
9 the plaintiffs in the Nurse case.

10 Now, what I am disposed to do is this, and  
11 then you tell me if you have got something else that  
12 you want to suggest, of course the plaintiffs in the  
13 Nurse case are entitled to find out what their position  
14 is. My problem is I am not sure that they ought to get  
15 a statement of their position or view frankly from your  
16 firm. So what I am disposed to do is grant the plaintiff's  
17 application in the order to show cause. I will leave  
18 out the reference in the TRO to defendant Local 32 and  
19 just make it applicable to Shea, Gould.

20 As to your firm's position in this matter, I  
21 will be glad to give you a further hearing on the question  
22 of whether or not I ought to disqualify you, but I think  
23 we have got to do that tomorrow morning. If you have  
24 got something more to say than you have said to me so far.

25 MR. FINNERAN: Well, I was going to say to

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2 your Honor I would like to appeal it tomorrow morning.

3 THE COURT: I beg your pardon?

4 MR. FINNERAN: I was going to say to your  
5 Honor I would like to appeal your proposed granting of  
6 the TRO tomorrow morning. However --7 THE COURT: Not to me, you mean. You don't  
8 mean appeal to me.

9 MR. FINNERAN: Appeal to the Second Circuit.

10 However, I think your Honor acts with prudence by having  
11 another hearing tomorrow as long as the people have a  
12 right to hear another view. I don't believe myself to be  
13 so magical --14 THE COURT: Look, Mr. Finneran, as I have  
15 said, I think they have a right to hear not only another  
16 view, but all kinds of views. My problem --

17 MR. FINNERAN: Maybe even mine.

18 THE COURT: No, that is not the one I am  
19 concerned about.20 MR. FINNERAN: Okay, but maybe even mine  
21 subject to tomorrow's hearing, because I might convince  
22 your Honor at tomorrow's hearing that notwithstanding  
23 what he has heard today that it would be just and proper  
24 and equitable if the people heard what I thought. And  
25 the people decide what they do thereafter.

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2 Your Honor, don't forget one thing, where does  
3 corrosion in this area flow from? It can only flow from  
4 an ally.

5 THE COURT: From who?

6 MR. FINNERAN: An ally. An employer as to  
7 an employee.

8 THE COURT: I don't understand you. You mean  
9 Allied?

10 MR. FINNERAN: Allied, the defendant here.  
11 Why would Allied be seeking to tie me up, shut me up,  
12 lock me up and prevent me from talking to my clients?  
13 Why would they want to do that? Why would Allied be here,  
14 why would Mr. Schanzer call my firm -- call a partner  
15 in my firm, call 32-J and say, if you propose to talk to  
16 the people on Wednesday we are going down to the Court  
17 on Tuesday to muzzle you?

18 THE COURT: Well, Mr. Finneran, I don't get  
19 that notion about that at this point.

20 MR. FINNERAN: That's what happens, your Honor.

21 THE COURT: Maybe I am misinformed.

22 MR. FINNERAN: I think your Honor, you are.

23 THE COURT: I hear from the Department of  
24 Labor that they have examined the Willis proposal and  
25 they think well of it.

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2 MR. FINNERAN: We think it's poor.

3 THE COURT: I have examined the Nurse proposal,  
4 what little I know about it, I understand the Department  
5 of Labor has and isn't willing to take a position  
6 obviously at this point. On the face of what I see so  
7 far, and I am not sure this is relevant to this proceeding,  
8 but I am not sure it isn't, but it seems to me that one  
9 can reasonably contend that in Willis they are doing better  
10 than they may do in Nurse. I think perhaps people can  
11 reasonably contend the other way. But that isn't my  
12 problem, Mr. Finneran. My problem is, and I believe this  
13 to be the question before the house, whether it is ap-  
14 propriate for Shea, Gould, whom I regard as an absolutely  
15 honorable organization, but nevertheless under all the  
16 circumstances I at the moment am persuaded it is not  
17 appropriate for Shea, Gould to be in the picture tomorrow  
18 at this meeting.

19 MR. FINNERAN: We will have the hearing on that  
20 tomorrow, your Honor.

21 THE COURT: If you have got something more to  
22 tell me, yes.

23 MR. FINNERAN: Oh, I will have a lot more to  
24 tell you.

25 THE COURT: All right, then I expect you to

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2 tell me a lot more than I have heard today tomorrow  
3 morning .

4 MR. FINNERAN: Yes. Because your Honor, don't  
5 forget I am acting with some problems in that I was told  
6 about this hearing later than one o'clock.

7 THE COURT: I understand that, Mr. Finneran.

8 MR. FINNERAN: Thank you, your Honor.

9 THE COURT: For goodness sakes, I understand  
10 that you are under extreme time pressure right now.  
11 All of us are.

12 MR. FINNERAN: Thank you, your Honor.

13 THE COURT: On the other hand, Mr. Finneran,  
14 I have a certain amount of sympathy for you, but this  
15 meeting was called by your client.

16 MR. FINNERAN: Don't sympathize for me,  
17 your Honor. I will stand or fall as I am. The only  
18 concern I have, and I think the only concern that you  
19 and I have, is what is the real issue and what are the  
20 facts, and is there another view to be presented to the  
21 women.

22 THE COURT: All right, well, what I am going  
23 to do right now --

24 MR. DICKER: Your Honor, may I be heard before  
25 you make up your mind concerning the relief against 32-J?

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2 My name is Marvin Dicker, I am with the firm of Proskower,  
3 Rose, Goetz & Mendelsohn. We act as general counsel to  
4 the Realty Advisory Board. We also represent numerous  
5 defendants, an employer, an owner and managing agent,  
6 defendants in this case.

7 Your Honor, I have no objection to other views  
8 of the Willis decree which was submitted to us for our  
9 signature, nor do I have any objection to other views  
10 concerning the industry-wide settlement that was negotiated  
11 with Local 32-J and which has been submitted to the  
12 Department of Labor for approval.

13 However, you have to understand that in the  
14 collective bargaining Local 32-J has a peculiar relation-  
15 ship with its members. For the most part we are talking  
16 about women who are cleaning women, who are not sophis-  
17 ticated, who are people who work at night for the most  
18 part, and for many, many years have worked at night and  
19 do not understand all of the nuances of particular kinds  
20 of an agreement, and this is a very complicated agreement.  
21 Both of them are.

22 These people look to their union and union  
23 counsel both, but each separately, for advice, for  
24 counsel as to what they should or should not do do.

25 Now your Honor, a letter went out from Local

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2 32-J signed by Mr. Bauman, the president and business  
3 manager, making certain representations stating that the  
4 consent decree in Willis would provide less in terms  
5 and conditions than the agreement we negotiated for you,  
6 it will take away some of the conditions you have enjoyed  
7 for years.

8 Now, if 32-J --

9 THE COURT: Who sent that letter out?

10 MR. DICKER: Mr. Bauman, it is attached to the  
11 moving papers of Exhibit F.

12 THE COURT: That's the last letter.

13 MR. DICKER: Yes, sir.

14 THE COURT: The letter that we are talking  
15 about.

16 MR. DICKER: The letter that we are talking  
17 about.

18 Your Honor, this kind of a letter and that kind  
19 of statement made by Mr. Bauman or any other union  
20 official is going to, I think, misrepresent the agreement.

21 Now, I have no objection to Mr. Bauman getting up at a  
22 meeting and saying, I don't think you ought to sign the  
23 agreement because it's not a good agreement, we don't  
24 like it. That's free speech. He has the right to express  
25 his opinion. But when he misrepresents the agreement and

1 cmsr

2 tells these people they are going to lose rights when not  
3 only in my view of the agreement initially it did not  
4 deprive them of any rights they had in the collective --

5 THE COURT: Well, what are you saying, that  
6 we should not have the meeting tomorrow?

7 MR. DICKER: Your Honor, if there is going to  
8 be a meeting tomorrow there ought to be some way of  
9 the Court insuring that misrepresentations like this are  
10 not made.

11 THE COURT: Well, I don't quite know how to do  
12 that, Mr. Dicker. I am not particularly happy about  
13 the notion that there is going to be a meeting tomorrow  
14 afternoon particularly in view of the fact that this  
15 letter says that counsel would explain everything to you,  
16 and, as you know, as I have indicated I think as clearly  
17 as I can this afternoon, I have questions in my mind about  
18 the propriety of present counsel representing them. But  
19 I am not quite sure what I can do about the meeting.

20 Certainly any member of the class can go to  
21 anybody he or she thinks will give him or her good advice.  
22 I don't think I can shut off the union from talking to them.  
23 I am disturbed about the notion that the union has called  
24 this meeting and that it is under the auspices that it is  
25 being conducted, but I am really curious and puzzled

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2 as to what I can do about the meeting.

3 I am proposing, as I think I have indicated,  
4 to enter this order to leave out defendant Local 32-J.5 MR. DICKER: But if you leave in Local 32-J,  
6 defendant Local 32-J --

7 THE COURT: I am going to leave them out.

8 MR. DICKER: If you leave them in, your Honor,  
9 they are not enjoined from having the meeting, they are  
10 just enjoined from exerting pressure, influence -- all  
11 right, but with respect to 2, from characterizing --

12 THE COURT: 2 and 3 I have no problem with..

13 I would be willing to leave Defendant Local 32-J into the  
14 preamble if Paragraph 1 were limited in some way. I think  
15 you have come right to the point that bothers me about  
16 the proposed order, Mr. Dicker. Under 1 they are  
17 restrained from exerting pressure or influence of any  
18 kind in an effort to persuade. Up to that point I am  
19 troubled. Coerce or mislead I have no problem with.  
20 Nobody wants to mislead, I know Mr. Finneran doesn't want  
21 to mislead them.

22 MR. FINNERAN: And would not, your Honor.

23 Your Honor, by the way, this is the employer representative,  
24 the Realty Advisory Board who petitioned this Court to  
25 deny the union that represents the people the right to

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2 speak to them.

3 THE COURT: Now, Mr. Finneran, whom he  
4 represents --

5 MR. DICKER: Your Honor, I am not --

6 THE COURT: I would like to get this order  
7 in good shape. He has made a suggestion which has bothered  
8 me. I am willing to leave defendant Local 32-J in there,  
9 but I am not willing to leave it in the way the order  
10 stands.

11 Mrs. Lowy, do you have any suggestion?

12 MRS. LOWY: Your Honor, we certainly would be  
13 willing to consider any suggestion from the Court that  
14 would make it easier, because we believe very strongly  
15 that Local 32-J cannot be used as a mechanism by which  
16 Shea, Gould can perpetuate the same kind of material that  
17 is perpetuated in this letter. Now, Shea, Gould and  
18 Local 32-J --19 THE COURT: Well, let me try out a couple words  
20 on it.

21 MRS. LOWY: We can take out the "to persuade."

22 THE COURT: No, let me try this. I am not  
23 sure this does it, but this is the way my mind is working.  
24 Let's look at Clause 1, "restrain from." You see where  
25 I am?

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1 cmsr

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2 Look at Clause 1, "restrained from exerting improper  
3 pressure." That may get us into all kinds of lawsuits as  
4 to whether it is improper. How about a reference to  
5 my order on the class action in the order? In light of  
6 the class certification.

7 MR. SCHOLER: Why don't we just restrain them  
8 from misleading in proposing the Willis proposal?

9 MRS. LOWY: Your Honor, may I also suggest  
10 that we have a Court Reporter present at the meeting  
11 tomorrow? That's some way in which we can have some --  
12 a Court Reporter present tomorrow, or a marshal or  
13 something of that sort, so that we can be sure --

14 THE COURT: Well, I am not going to -- I think  
15 could get one if you want one. That is up to you.  
16 I don't think I have the power to direct a Court Reporter  
17 to attend the meeting. You can hire a Court Reporter.

18 MRS. LOWY: As long as we have of course  
19 permission to have that.

20 THE COURT: Oh, yes, of course. How about  
21 doing it this way, how about after the figure 1, "re-  
22 strained from exerting pressure" let's take out "influence  
23 of any kind." I think the union has got a right to talk  
24 to these people and try to influence them to go one  
25 way or another.

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2 MRS. LOWY: Even though they are an adverse  
3 party, your Honor?

4 THE COURT: Then go out to the word "manner,"  
5 in other words, it would read, "restrain from exerting  
6 pressure either in writing or orally upon members of the  
7 proposed Willis" -- no, let's take out "proposed."

8 "of the Willis class in an effort to persuade." Now,  
9 take out "persuade right there." "in an effort to coerce,"  
10 We take out "persuasion."

11 Mr. Finneran impresses me when he says he has  
12 got a right to talk to people, or at least the union does.  
13 So what I would do is enter an order which says, "restrained  
14 from exerting pressure either in writing or orally upon  
15 members of the Willis class in an effort to coerce or  
16 mislead them into opposing the Willis proposed consent  
17 decree currently pending before the Court," and so on,  
18 and leave it.

19 Mr. Finneran, I am sure this doesn't make you  
20 happy, but at least it cuts down a little bit.

21 MR. FINNERAN: Your Honor, I hate to say this,  
22 but I really am internally crying. It's bizarre. It's  
23 crazy. It's insane. I just can't for the life of me  
24 understand it. And it's the first time that I have seen  
25 an employer to restrain counsel or a union from telling

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2 people what they think.

3 THE COURT: All right. Well, you know the basis  
4 for my thinking.5 MR. FINNERAN: I know your basis as to me and  
6 that I think we can have a hearing on and have an appeal  
7 on.8 THE COURT: All right. We will talk about  
9 that tomorrow morning.10 MR. FINNERAN: Yes, your Honor. And, your  
11 Honor, maybe what might be a good suggestion, if I may  
12 render it to your Honor, there are very important issues  
13 raised as to our firm and as to our relationship. I  
14 think probably we would like to introduce evidence and  
15 what-have-you in the matter.16 THE COURT: You don't have much time before  
17 one o'clock tomorrow.

18 MR. FINNERAN: Well, I know that.

19 THE COURT: We will do what we can.

20 MR. FINNERAN: All right, your Honor. What I  
21 was going to suggest is maybe you adjourn my hearing  
22 before one o'clock tomorrow, possibly extend --23 THE COURT: Well, let's get started tomorrow  
24 and see where we go.

25 MR. FINNERAN: You are putting me in a unique

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2 disadvantage, your Honor.

3 THE COURT: You are proposing that we adjourn  
4 the meeting tomorrow?5 MR. FINNERAN: No, no, adjourn my hearing  
6 tomorrow. I am restrained, you tied me up, you bound and  
7 gagged me. I am restrained. Why don't we have my  
8 hearing in some semblance of reasonable time?9 THE COURT: Yes, I understand, Mr. Finneran,  
10 that you are under the gun very much here.

11 MR. FINNERAN: Yes, your Honor.

12 THE COURT: Let's plan to meet at ten o'clock  
13 tomorrow morning and we will see where we go from there.  
14 I am certainly not disposed to require you to proceed  
15 when you are totally unprepared. It seems to me, however,  
16 the question is a fairly simple one and we ought to be  
17 able to deal with it tomorrow morning. Let's try to do  
18 it. If we can't, we can't. All right.19 MRS. LOWY: Your Honor, may we deem service  
20 complete upon the relevant parties all of whom have  
21 appeared today, and service on the other parties to  
22 the Nurse action to be made by mail?23 THE COURT: Well, Mr. Finneran, have you been  
24 served?

25 MR. FINNERAN: I was served down the hall with

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2 the papers.

3 THE COURT: Mr. Scholer, have you been served?

4 MR. SCHOLER: I have received a copy of the  
5 meeting papers which now you have corrected.6 THE COURT: There is nothing else to serve,  
7 Mrs. Lowy, is there? Mr. Finneran and Mr. Scholer have  
8 all the papers.

9 MRS. LOWY: Yes, they have all the papers.

10 I wanted this to be deemed service --

11 THE COURT: Yes, I think they are willing to  
12 accept that. I just want to be sure I have got everything.

13 MRS. LOWY: Yes, they have everything.

14 THE COURT: Is there anybody else who has not  
15 been served? All right, we will make the return date on  
16 this order to show cause to the extent it hasn't been  
17 dealt with February 18th, tomorrow, at ten a.m. in this  
18 courtroom, which is 705.19 MR. SCHOLER: Your Honor, will you please note  
20 our intention to, so far as 32-J, to appeal from the  
21 order which you have just entered?22 THE COURT: Yes, indeed. I take it the Reporter  
23 has that on the record.

24 MR. SCHOLER: Do we ask for a stay here, or --

25 THE COURT: You can ask me for a stay. I

1 cmsr

2 think you can. I will not --

3 MR. SCHOLER: You refuse a stay.

4 THE COURT: Yes.

5 MR. FINNERAN: I think if you are not going  
6 to stay, your Honor, I think the rules require a certi-  
7 fication of your order. The reason why no stay, and  
8 then ask for certification up..

9 MRS. LOWY: There is no certification up  
10 on a --

11 THE COURT: I am not sure we need it. However,  
12 Mrs. Lowy, will you look this up, and if I need certifica-  
13 tion will you give it to me in the morning.

14 MRS. LOWY: Your Honor, a temporary restraining  
15 order is not an appealable order.

16 MR. FINNERAN: We looked it up, and it is.

17 MRS. LOWY: Would you cite your case?

18 THE COURT: Mrs. Pinzler, Mrs. Lowy, will you  
19 look it up and let me know in the morning?

20 Now, Mrs. Lowy, I am saying that service on  
21 attorneys for the parties on or before 6:30 p.m. on the  
22 17th day of February, what about the others that you have  
23 not served yet?

24 MRS. LOWY: If you would put in that by  
25 mail, then we could serve all of the other parties by

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2 mail, I don't believe that any of the other parties who  
3 are present in court have an interest in this matter.  
4 The attorneys presently appearing before you are the  
5 interested parties.

6 Your Honor, can you give us until seven o'clock  
7 to get to the post office with service by mail?

8 THE COURT: All right. I will give you until  
9 7:30 if you like.

10 MRS. LOWY: Fine. Thank you.

11 THE COURT: All right, Mr. Finneran, I will  
12 see you at ten o'clock tomorrow morning.

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2 DARLENE K. WILLIS, Individually and :  
3 on behalf of all others similarly  
4 situated, :  
5 Plaintiff, : 75 Civ. 935  
6 - v s - : 74 Civ. 4889  
7 ALLIED MAINTENANCE CORPORATION, :  
8 et al., :  
9 Defendants.  
10 -----x  
11 MARIA NURSE, et al., :  
12 Plaintiffs, :  
13 - v s - :  
14 DARLENE K. WILLIS, individually and :  
15 on behalf of all others similarly  
16 situated, :  
17 Proposed plaintiff :  
18 Intervenor, :  
19 - v s - :  
20 ALLIED MAINTENANCE CORPORATION, :  
21 et al., :  
22 Defendants.  
23 -----x  
24 Before :  
25 HON. CHARLES E. STEWART, JR.

District Jud

New York, N. Y.  
February 18, 1976 - 10:00 a.m.

1      2 mksr

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## 2      Appearances:

## 3      For Plaintiff and Proposed Plaintiff Intervenor:

4      JOAN BERTIN LOWY, ESQ.,  
5      ISABELLE KATZ PINZLER, ESQ.,  
6      ROBERT P. ROBERTS, ESQ.,  
7      DIANA GREENE, ESQ.,

## 8      For Defendant Bank of America:

9      MARGARET DU. B. AVERY, ESQ.,

## 10     For Allied Maintenance Corporation:

11     EMANUEL DANNET, ESQ.

12     MARVIN DICKER, ESQ.,

13     Attorney for Defendant The Realty Advisory  
14     Board on Labor Relations and for certain  
15     other defendants in the Nurse case.

16     MUDGE, ROSE, GUTHRIE &amp; ALEXANDER, ESQS.,

17     Attorneys for Chemical Bank in the Nurse case;  
18     By: DOUGLAS DANZIG, ESQ., of counsel.

19     MELANIE NUSSDORF, ESQ.,

20     Attorney for the United States Department of Labor.

21     HAROLD G. ISRAELSON, ESQ.,

22     Attorney for Defendant Local 32-B Service Employees  
23     International Union AFL-CIO.

24     ROBERT SCHANZER, ESQ.,

25     Attorney for Defendant Allied Maintenance.

26     WILLIAM C. FINNERAN, JR., ESQ. and

27     SHEA, GOULD, CLIMENKO, KRAMER &amp; CASEY, ESQS.,

28     Attorneys for Plaintiff Nurse;

29     By: MILTON GOULD, ESQ. and

30     WILLIAM C. FINNERAN, JR., ESQ., of counsel.

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2           THE COURT: All right, counsel.

3           MR. GOULD: If your Honor please, we have  
4           reached a stipulation. Do you want to state it to the  
5           Court?

6           MRS. LOWY: Yes, I would like to.

7           MR. GOULD: Go ahead.

8           MRS. LOWY: Your Honor, for the past two hours  
9           or so we have been discussing all the problems raised in  
10          the present motion, and we have reached an understanding  
11          with the parties which I will state.12          No. 1, Shea, Gould and Local 32-J hereby withdraw  
13          objections to the Willis settlement and so state for  
14          the record, and also state for the record that we have  
15          no --

16          THE COURT: What case is this in?

17          MRS. LOWY: In Willis, your Honor.

18          THE COURT: Very well.

19          MRS. LOWY: And also state for the record that  
20          they have no other objection and that no objection will  
21          be raised in the future.22          No. 2, the union meeting scheduled for one p.m.  
23          today will proceed, with the presence of a Court Reporter,  
24          and Local 32-J will advise its members that it approves the  
25          Willis settlement.

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2 THE COURT: Say that again, please.

3 MRS. LOWY: The union meeting will proceed  
4 today, and the union officials will advise their members  
5 that they approve the Willis settlement.

6 MR. GOULD: There is no objection. They approve  
7 it, they have no objection, and they have no criticism.

8 THE COURT: All right.

9 MRS. LOWY: No. 3, a correction of the previous  
10 letter dated February 11, 1976, which was sent by Local  
11 32-J to the Willis class will be mailed to class members  
12 in a manner and form approved by counsel for the class  
13 and by the Court.

14 MR. GOULD: On that point, your Honor, I think  
15 we should add something.

16 THE COURT: Mr. Gould --

17 Are you finished, Miss Lowy?

18 MRS. LOWY: No, your Honor.

19 THE COURT: All right, let us hear the rest of  
20 it and then we will come back to you.

21 MRS. LOWY: No. 4, Local 32-J and Shea, Gould  
22 will secure the withdrawal of objections which were  
23 previously obtained by Local 32-J and will deliver copies  
24 of said withdrawals to counsel for the Willis class and  
25 to the Court by Monday, February 23, 1976.

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2 No. 5, all future communications concerning  
3 the subject matter of this litigation between the attorneys  
4 or parties to class members will be subject to prior  
5 Court approval.

6 THE COURT: Mr. Gould.

7 MR. GOULD: That is not the end, your Honor.

8 MRS. LOWY: We have more.

9 THE COURT: All right.

10 MRS. LOWY: No. 6, the Court will supervise the  
11 conduct of attorneys to insure that all rights are pro-  
12 tected and that no abuses occur.

13 And the last point, No. 7, the present motion  
14 will be withdrawn without prejudice but can be reinstated  
15 at any time on telephone notice.

16 THE COURT: All right.

17 MR. GOULD: The only comments I have to make,  
18 your Honor, with respect to the so-called correction of  
19 the communication that was addressed to the membership  
20 of Local 32-J, it will be in the form or it will state  
21 what the facts are, that the objections that were expressed  
22 or were referred to are entirely removed by the stipulation  
23 that was entered into on February 18, 1976 which in the  
24 opinion of counsel make the two things consonant so that  
25 there isn't any objection to it.

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2 I think that is the only comment I have to make  
3 on that; otherwise we accept the stipulation.

4 THE COURT: Miss Lowy, would you read to me  
5 No. 7 again, please?

6 MRS. LOWY: No. 7, the motion to be withdrawn  
7 without prejudice, and it can be reinstated at any time on  
8 telephone notice.

9 THE COURT: Do you accept that?

10 MRS. LOWY: Your Honor, we believe that --

11 THE COURT: Miss Lowy, if it would help you  
12 any, I do not think you are retreating from your obliga-  
13 tions to accept that proposal. I have confidence in the  
14 counsel who are dealing on this matter. I do not think  
15 that the question will come up again, unless there has  
16 been an entirely different set of circumstances. I am  
17 not urging it upon you. Apparently you have accepted it,  
18 and I take it that is your view, is that right?

19 You accept that?

20 MRS. LOWY: Reluctantly, your Honor.

21 THE COURT: What?

22 MRS. LOWY: Reluctantly.

23 THE COURT: But you accept it. Well, re-  
24 luctantly or not, it is either "Yes" or "No" at this point;  
25 you accept it?

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2 MR. GOULD: Well, we all accept it or we go  
3 back and talk again.

4 THE COURT: You accept it?

5 MRS. LOWY: I accept.

6 THE COURT: I think this is a good solution  
7 to a very difficult problem.

8 I think, Mr. Gould, that your firm has gotten  
9 itself, as happens to all of us, in a difficult position.  
10 I think in terms of the future of this lawsuit you know  
11 my feelings. I think your efforts and Mr. Finneran's  
12 efforts to work out this problem are commendable. I am  
13 encouraged to think from time to time that this job is  
14 not so bad because I have good lawyers working for me who  
15 try to do the right thing.

16 The zeal that a lawyer has for his client's  
17 interest is, of course, important. I think it is important  
18 also that a lawyer recognize that there comes a time  
19 when, frankly, he is on both sides of the fence -- not  
20 because of his zeal but just because of circumstances.

21 I am encouraged in my view that this is a good  
22 job, because it is a good job, since I have good lawyers  
23 who are willing to stand up and tell me what they think.

24 I commend all of you.

25 MR. GOULD: Thank you very much, sir.

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2 MR. ISRAELSON: Your Honor, I would like to  
3 say something.

4 THE COURT: Yes?

5 MR. ISRAELSON: Harold Israelson, on behalf of  
6 the International Union. I have been involved in the  
7 attempted mediation of possible settlement of problems  
8 which have existed between the employer and the union.  
9 The problems have been very, very difficult, but we have  
10 solved them. I think we could not have solved them without  
11 your understanding and patience, as always, and I want  
12 to thank you for all the help that you have given us  
13 because the parties have to work together and live together,  
14 not only in the immediate future but for the long road  
15 ahead. The only way that they can exist is by mutual  
16 understanding between them. For that reason no lawsuit  
17 and no determination by a Court would solve the problems.  
18 The problems have to be solved by the parties themselves,  
19 and to the extent that you have helped us, thank you very  
20 much.

21 THE COURT: All right.

22 Mr. Gould, this is a difficult thing for me to  
23 say. I appreciate everything you have done, Mr. Gould,  
24 and I think it is going to be difficult for your firm to  
25 be in the picture from here on in.

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2 MR. GOULD: If your Honor please, we have  
3 considered all aspects of this very carefully, and we  
4 are satisfied that what we have done is right.

5 THE COURT: I have no doubt about that. I am  
6 thinking of the future.

7 MR. GOULD: I do not think your Honor has  
8 heard all the history in this matter, but you may be  
9 assured that we will solve any problems we have.

10 THE COURT: There are two notions, and I have  
11 had to deal with these myself -- one is the fact and the  
12 other is the appearance.

13 MR. GOULD: The appearance was created after  
14 the fact.

15 THE COURT: I have had to deal with this  
16 myself, and I have excused myself from a case in which  
17 I thought the fact did not justify it but the appearance  
18 was there.

19 Mr. Gould, I really have difficulty seeing  
20 how your firm can continue in this case.

21 MR. GOULD: Well, that is a matter we will  
22 have to solve, your Honor. That is a professional problem.  
23 I have had almost nothing to do with this.

24 THE COURT: Mr. Gould, I do not think it is  
25 a problem you have to solve. This is my view.

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2 MR. GOULD: I appreciate your Honor's views,  
3 and I respect your Honor's views, and yet your Honor must  
4 recognize that in matters of professional conduct we have  
5 to make our own decisions and face the consequences for  
6 them.

7 THE COURT: Yes.

8 MR. GOULD: I take what your Honor says with  
9 all respect, and yet I must tell the Court in solving  
10 this problem it will be solved by the senior partners in  
11 my firm with a very careful apprehension of what is  
12 involved.

13 THE COURT: I know that is the case, Mr. Gould.  
14 I just wanted to let you know what I think about this.  
15 I think you have a difficult problem -- one that you did  
16 not bring on yourself deliberately, but one that was  
17 thrust upon you.

18 I do not see a way out. I do not at this  
19 point see a way out.

20 MR. GOULD: I do not know whether there is a  
21 way out or not, and yet, with all respect to the Court,  
22 this is something we have to settle ourselves.

23 THE COURT: All right.

24 MR. GOULD: I will, of course, mention in any  
25 conversations I have on the point what your Honor thinks

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2 about it.

3 THE COURT: Yes.

4 MR. GOULD: I will also tell them what I think  
5 about it. I do not know that it is appropriate for me  
6 right now to say that.

7 THE COURT: Oh, of course.

8 MR. GOULD: There is a mystery about this case.

9 THE COURT: I have a view, you have a view.

10 My view I do not think will change but there it is.

11 MR. GOULD: And your Honor knows me -- I don't  
12 change my mind too often either.

13 THE COURT: All right, counsel, thank you.

14 MR. GOULD: Thank you.

15 MR. DANNET: Thank you, your Honor.

16 [Hearing closed.]

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[Portions of transcript of proceedings, March 5,  
12, 1976, which were omitted from Appellants'  
Appendix, appear at Supp. A. 128-154.]

"SUPP. A. 128

1 Barf Baumann-direct 58

2 MR. SHELTON: I would say until about 5:00 o'clock,  
3 your Honor, if that is all right with you.

4 THE COURT: That is all right. I will be willing  
5 to go a little later if you would like to.

6 MR. SHELTON: Thank you, your Honor. Let's  
7 see how it works out.

8 (Recess.)

9 (Mr. Baumann resumes.)

10 THE COURT: For planning purposes, Mr. Shelton,  
11 does it suit you if we plan to work until 5:15, and then  
12 at or about that time adjourn?

13 MR. SHELTON: Very good, your Honor.

14 THE COURT: Let's keep that hour of 5:15 in mind.  
15 When we get to a point where you think it is appropriate  
16 to stop will you let me know?

17 MR. SHELTON: Yes, your Honor.

18 THE COURT: Ms. Lowy, do you have any problem  
19 with this timetable?

20 MS. LOWY: No, your Honor. Before we proceed  
21 with Mr. Baumann's testimony I would like to make an  
22 objection to the Court.

23 I would like to move to have this entire line  
24 of testimony stricken on the grounds that it is not relevant  
25 to the issues before the Court which is the disqualification

1 bsrft

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2 issue. Mr. Shelton is clearly going to the issue of  
3 whether or not the union has liability for the underlying  
4 claims presented in the Willis case of discrimination  
5 as in the Willis case, I'm sorry, of discrimination, and  
6 this is a matter that has been held to be not appropriate  
7 for determination for an issue -- a question of dis-  
8 qualification.

9 I would call to your Honor's attention the case  
10 of Communication Workers of America versus New York  
11 Telephone Company, which was a case in this court by  
12 Judge Tyler. Judge Tyler made this finding in the  
13 context of deciding whether the union could act as a  
14 class representative for its members where a company is  
15 able to plan was attacked as discriminatory.

16 The Court said, and I quote, "In resolving this  
17 treble some question, it is unnecessary to determine  
18 the actual issue of whether or not the union acquiesced  
19 or joined in the alleged unlawful and discriminatory  
20 practices and policies complained of by the employees.

21 "Whatever the answer to that issue, the record  
22 sufficiently establishes that the union's interest is  
23 not coextensive with members of the class. Because  
24 the coverage of the company disability plan is often the  
25 subject of collective bargaining, the union is by

1 bsrF

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2 no means the best representative of the class. The  
3 potential conflict of interest taken in combination is  
4 sufficiently serious and compelling to preclude a finding  
5 that the union -- in brackets -- would fairly and  
6 adequately protect the class interests.

7 "Accordingly, the union is not a proper representa-  
8 tive of the Telephone Company female employees who will  
9 constitute the class and the union will not be permitted  
10 to act as class representatives in this case."

11 That appears at 8 PD paragraph 9542.

12 The same result was reached in Lynch versus  
13 Sperry Rand at 62 FRD 73, also in this district, 1973, and  
14 that case also involved claims of sex discrimination  
15 with relation to certain fringe benefits and the question  
16 of disqualification and conflict of interest also arose  
17 in the context of a motion for class certification.

18 The Court noted that there were certain problems  
19 in interpreting the collective bargaining agreements and  
20 in the union's role in any possible liability and held,  
21 and I quote again, "There is at least a serious  
22 question as to whether the plaintiff unions may be legally  
23 liable directly to the male employee class for damages  
24 suffered from pension plan discrimination resulting  
25 from the collective bargaining agreements negotiated

1 berf.

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2 and entered into by the unions. This would place the  
3 unions in direct conflict with the interests of the class  
4 membership. I do not pass here on the ultimate merits of  
5 the questions which these contentions may raise. It is  
6 too early in the litigation to do so. It is apparent,  
7 however, from what appears on the record at this stage,  
8 that there are serious potential conflicts of interest  
9 between the union plaintiffs and the class they seek  
10 to represent."

11 We believe that the standard for finding dis-  
12 qualification is clearly the existence of a potential  
13 for conflict of interest, and submit that this is not  
14 the right time for a trial on the merits of the Willis  
15 action. And that I think is what we are getting into here.

16 THE COURT: Well, Miss Lowy, it seems to me what  
17 I have been hearing is testimony to support the notion that  
18 there isn't any conflict of interest.

19 MR. SHELTON: Certainly.

20 MS. LOWY: Your Honor, that is based on the  
21 assumption that if the union has no liability it is not  
22 in conflict with the members, the union members.

23 Now, that is the very question that remains  
24 open in the Willis case, as to whether or not the union  
25 has liability for the discrimination, which it appears

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2 Mr. Baumann has admitted, that exists in the -- either  
3 in the collective bargaining agreements themselves or  
4 in the administration of the collective bargaining  
5 agreements.

6 Now, we submit only that as long as that question  
7 is open, that that is sufficient -- that is as far as  
8 this Court has to go and we don't believe that this is  
9 the proper forum for trying the case as to the union's  
10 liability.

11 THE COURT: Anything you want to say, Mr. Shelton?

12 MR. SHELTON: Yes, your Honor.

13 May I inquire whether counsel is now proceeding  
14 on the basis of an adversary capacity? I don't understand  
15 why she is here.

16 THE COURT: She is proceeding, Mr. Shelton,  
17 on the basis that I invited her to be here.

18 MR. SHELTON: Your Honor, I don't think --

19 THE COURT: I don't want to continue this dis-  
20 cussion at this time. Ms. Lowy, I overrule your objection.  
21 I think I understand your point. I believe I understand  
22 your point. For the moment at least I am not persuaded  
23 it is a valid point. We will proceed. I will, of course,  
24 be interested in hearing further from you, Ms. Lowy,  
25 as we go along if you feel that it is appropriate and

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2 useful to pursue the point. But at the moment let's  
3 go ahead.

4 MS. LOWY: Your Honor, may I clarify one matter,  
5 that any finding here would not be binding insofar as  
6 ultimate trial on the merits of the remaining issues  
7 in Willis is concerned.

8 To that extent we have a very clear and strong  
9 adversary interest.

10 THE COURT: The only thing I am interested in  
11 at the moment, Ms. Lowy, is in determining what the Court  
12 of Appeals have asked me to determine. That is the question  
13 of disqualification.

14 All right.

15 BY MR. SHELTON:

16 Q After the union got these consents from its  
17 members, did the Shea, Gould firm advise the union that  
18 the union would be named as a defendant by the employers  
19 if the employers were sued?

20 A They did.

21 Q What was the union told about that?

22 A They were told that there was very good pro-  
23 bability that the union could be sued by the employers  
24 and I believe the term they used was cross complaints  
25 against the union.

1        jke

Baumann - cross

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2                          Mrs. Pinzler and her associates made a motion  
3                          to disqualify us which they withdrew pursuant to a stipula-  
4                          tion which your Honor accepted in open court. I understand  
5                          now that your Honor has invited them to participate in this  
6                          proceeding as amicus.

7                          THE COURT: I hope by this time, Mr. Shelton,  
8                          you have seen my two orders.

9                          MR. SHELTON: Yes, I just want to -- I did see  
10                         the two orders that you have entered on, I guess it was  
11                         March 5th, your Honor, that Monday.

12                         I know there is another notation in the Law  
13                         Journal today about something and I hope I haven't missed  
14                         anything.

15                         THE COURT: I'm sure you haven't. I think per-  
16                         haps what you saw is a notation that there have been coming  
17                         in to me orders for my signature of people who are partici-  
18                         pating in the settlement arrangements.

19                         MR. SHELTON: I see.

20                         THE COURT: Most of which I think are signed on  
21                         behalf of your firm by Mr. Hecker and I have been routinely  
22                         so ordering those.

23                         I believe, so far as I know, that is all that's  
24                         happened.

25                         MR. SHELTON: All right.

1 jke

Baumann - cross

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2 THE COURT: Mr. Shelton, because of the experi-  
3 ences we have had in this matter with respect to a lack of  
4 communication between you and me, if I do anything of any  
5 significance here, I intend to make it perfectly clear to  
6 you that I have acted.

7 MR. SHELTON: Thank you very much, your Honor.  
8 That would be appreciated.

9 THE COURT: I, as you know, was disturbed that  
10 you were unaware of the actions that I had taken in response  
11 to Mr. Gould's letter, and I intend to make sure that if I  
12 do anything that I think you would like to hear about to let  
13 you know in advance.

14 MR. SHELTON: May I just make a statement,  
15 though, your Honor?

16 Ms. Pinzler is really an adversary to us, I  
17 don't think that she has the ability to appear here in an  
18 amicus capacity, and that is the point.

19 THE COURT: That is an interesting question,  
20 Mr. Shelton.

21 However, I have invited counsel, not necessarily  
22 Miss Pinzler, but I have invited counsel to appear here and  
23 I think we will proceed.

24 MR. SHELTON: I just want your Honor to have  
25 my position on the record that I don't believe that she is

1 jke

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2 in a position to appear here in an amicus capacity since  
3 she is really our adversary on this matter and that is the  
4 point I want to make to your Honor.

5 THE COURT: I don't care whether she is here  
6 as amicus or as an adversary or for whatever official reason.  
7 I'm anxious to have her appear and proceed.

8 MS. PINZLER: Your Honor, if I may respond in  
9 part, and also make a statement myself, I would like to  
10 ask Mr. Baumann a few questions, and I do view it in the  
11 role of amicus curiae.

12 We have no real adversary interest to the Shea,  
13 Gould firm, except that we clearly did initially make the  
14 motion and we had reasons for doing it at that time.

15 But we would like to ask Mr. Baumann some ques-  
16 tions in order just to clarify certain points on the dis-  
17 qualification issue. We have stated before that it is not  
18 our intention to try the case of the Union's possible  
19 liability at this point. That will be done at a later  
20 time and in a different case, namely, the Willis case.

21 And we would like it to be clear on the record  
22 that our participation is for a very limited purpose here,  
23 and on a limited issue.

24 To the extent that the question of the Union's  
25 possible liability is touched on here, it is certainly not

1 jke Baumann - cross 103

2 going to be explored in any depth by us at this time.

xx 3 CROSS EXAMINATION

4 BY MS. PINZLER:

5 Q Mr. Baumann, when you testified on direct, I  
6 believe you mentioned that you had been associated with  
7 Local 32J since 1953, is that correct?

8 A 1952.

9 Q 1952, excuse me.

10 In what capacity were you with them?

11 A Well, from 1952 up until my election as Vice  
12 President in 1970, I was employed as assistant to the  
13 President.

14 Q In that capacity, Mr. Baumann, did you partici-  
15 pate in any collective bargaining negotiations prior to your  
16 election as Vice President of the Union?

17 A Yes.

18 Q In what capacity did you participate?

19 A Well, fundamentally and basically in the capa-  
20 city of a record keeper and note taker, and as an imple-  
21 menter of the settlement of the agreement.

22 In other words, after the agreement was settled,  
23 then it was my duty to implement the agreement, to see that  
24 the employees complied with it.

25 MS. PINZLER: I would like to have these

1 jke Baumann - cross 104

2 four marked as Amicus Curiae Exhibits 1 through 4.

3 THE CLERK: A, B, C, D.

4 MS. PINZLER: All right.

5 THE CLERK: Defendant's Exhibits A, B, C and D  
6 marked for identification.

7 MS. PINZLER: For clarification, could we make  
8 it either Amicus Curiae or Plaintiff-Intervenor?

9 MR. SHELTON: Why don't we have it Plaintiff-  
10 Intervenor because it seems to me that is a more accurate  
11 interpretation of what's going on.

12 THE CLERK: Plaintiff-Intervenor's Exhibits  
13 A, B, C and D marked for identification.

14 THE COURT: I don't think that is an accurate  
15 description of Miss Pinzler's role. I'm not sure it makes  
16 any difference at all. Why don't we just call this Pinzler's  
17 Exhibits A, B, C and D.

18 THE CLERK: Pinzler's Exhibits A, B, C and D  
19 marked for identification.

20 THE COURT: I suppose, Miss Pinzler, although  
21 I'd like to get your name on an exhibit, a more accurate  
22 description of this is that it is my exhibit. So we will  
23 call it Court's Exhibit A.

xx 24 (Court's Exhibits A, B, C and D marked for  
25 identification.)

1 jke

Baumann - cross

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2 Q I show you Court's Exhibit A and ask you to  
3 identify it.

4 A Agreement between the Building Services League  
5 and Local 32J, effective May 1, 1968 through April 30, 1971.

6 MS. PINZLER: For the record, these are Xerox  
7 copies of collective bargaining agreements which were  
8 produced in response to a notice of deposition in the Willis  
9 case.

10 We no longer have the originals, so we will have  
11 to put in the copies.

12 THE COURT: I don't hear any objection to the  
13 fact that it's a Xerox copy.

14 Q I show you Court's Exhibits B for identifica-  
15 tion, and ask you to identify it.

16 A Exhibit B is the agreement between Building  
17 Services League and Local 32J, effective May 1, 1965  
18 through April 30, 1968.

19 Q I show you what's been marked for identifica-  
20 tion Court's Exhibits C and ask you to identify it.

21 A Agreement between Building Services League and  
22 Local 32J, effective -- the dates are not too clear -- looks  
23 like -- I can't make out the effective date, the expira-  
24 tion date looks like April 30, 1964.

25 I would therefore assume that the effective

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jke

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date would be May 1, 1961.

3

Q Okay.

4

5

And I show you what's been marked for identi-  
fication Court's Exhibit D and ask you to identify it.

6

7

8

A D is agreement between Building Services League  
and Local 32J, effective March 1, 1959 through April 30,  
1962.

9

10

MS. PINZLER: Your Honor, I move the admission of  
these exhibits.

11

THE COURT: May I have them?

12

13

MS. PINZLER: If you would mark these Court's  
Exhibits E, F, G, H and I.

xx

14

15

(Court's Exhibits E, F, G, H, and I marked  
for identification.)

16

Q Mr. Baumann, I show you what's been marked --

17

THE COURT: I haven't ruled on these.

18

19

MR. SHELTON: Your Honor, they are your exhibits.  
I don't know what you want to do with them and I don't  
understand the relevance of them.

21

22

THE COURT: I'm asking you, Mr. Shelton, if you  
have anything you want to say.

23

24

MR. SHELTON: No, your Honor, they're your  
Honor's exhibits.

25

THE COURT: They are received.

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xx 2 (Court's Exhibits A, B, C and D received in  
3 evidence.)

A 1960 Female Cleaners Agreement between Realty  
Advisory Board on Labor Relations, Inc. and Local 32J,  
effective -- appears to be January 1, 1960 through December  
31, 1962.

10 Q I show you what's been marked for identifica-  
11 tion Court's Exhibit F and ask you to identify it.

A F is 1963 Female Cleaners Agreement between  
Realty Advisory Board and Labor Relations, Inc. and Local  
32J, effective January 1, 1963, to December 31, 1965.

Q I show you what's been marked for identification as Court's Exhibit G and ask you to identify it.

17           A     Well, I can't make out the top of the agreement,  
18       but it indicates some year, Female Cleaners Agreement between  
19       Realty Advisory Board and Local 32J, effective January 1,  
20       19 -- I'm sorry, I can't read the dates.

21 Q Is it possibly 1966, would there have been an  
22 agreement that year?

23           A     Well, if you will allow me to thumb through it  
24           I could probably tell you.

25 Q SURG.

1 jke

Baumann - cross

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2 A Effective January 1, 1966 through December 31,  
3 1968.

4 O Okay.

5 I show you what's been marked for identifica-  
6 tion Court's Exhibit II and ask you to identify it.

7 A It is 1969 Female Cleaners Agreement between  
8 Realty Advisory Board on Labor Relations, Incorporated  
9 and Local 32J, effective January 1, 1969, to December 30,  
10 1971.

11 O And finally, I show you what's been marked for  
12 identification Court's Exhibit I, and ask you to identify  
13 it.

14 A It is 1972 Office Cleaner's Agreement between  
15 Realty Advisory Board on Labor Relations, Incorporated and  
16 Local 32J, effective January 1, 1972 to December 31, 1974.

17 MS. PINZLER: Your Honor, I move the admission  
18 of these exhibits.

19 THE COURT: Mr. Shelton.

20 MR. SHELTON: Your Honor, I can only say what I  
21 said before, since these have been marked as Court's  
22 Exhibits for identification, if your Honor wants to admit  
23 them, I assume he will.

24 I'm not sure I understand what the relevance of  
25 them are.

1               Take

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2               THE COURT: They are received.

xx 3               (Court's Exhibits E, F, G, H and I received in  
4               Evidence.)5               THE COURT: Perhaps, Miss Pinzler, you can tell  
6               us what you think is the relevance of these, what is it now,  
7               A through 1?

8               MS. PINZLER: Right.

9               Mr. Shelton introduced the most recent BSL and  
10              RAB agreements, the most recent one or two of them.11              These are the prior agreements which I think  
12              make clear the development of how these negotiations have  
13              gone and what the past practices were in comparison to the  
14              present practices and the more recent practices which have  
15              been brought out on direct.16              And I think it would be instructive to see the  
17              changes that have come and when they came in these agreements.

18              THE COURT: All right.

19              Q      I believe you testified that when Local 32J  
20              negotiated with the BSL in 1974, that the BSL agreed that  
21              it would provide equal pay if RAB would agree to it, is that  
22              correct?

23              A      Yes.

24              Q      Was this the first time they agreed to equal  
25              pay?

1 jke

Baumann- cross

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2 A Yes.

3 Q I show you a copy of Plaintiff's Exhibit 5 and  
4 I would like you to point out the clause that agrees to  
5 equal pay?

6 A Under Article 16, paragraph 1C, it provides  
7 that effective May 1, 1975, all Maintenance Cleaners I  
8 shall receive the same hourly wage increase negotiated by  
9 the Union with the Realty Advisory Board on Labor Relations,  
10 Incorporated for the year beginning January 1, 1975, and all  
11 Maintenance Cleaners II shall receive the same hourly  
12 wage increase negotiated by Local 32B, SEIV, AFL-CIO with the  
13 RAB for the year beginning January 1, 1975.

14 Now, this means that the Maintenance Cleaners  
15 I would receive equal pay because when we negotiated this  
16 agreement, we were at that point embarking upon our progress  
17 to file lawsuits against the individual landlords and  
18 building managers, in which we were seeking equal pay, and  
19 so that if we were to achieve equal pay through those law-  
20 suits or through the settlement of our upcoming RAB agree-  
21 ment, the effect of this provision would mean that the  
22 employers on these jobs would have to, as of May 1, 1975,  
23 provide equal pay for the female cleaners because they would  
24 have to give the same hourly wage increase that the female  
25 cleaners would have gotten under the RAB agreement.

1 jke

Baumann - cross.

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2 Q Isn't there almost an identical clause in the  
3 earlier BSL agreements, which in effect, the BSL members  
4 agreed to whatever increase the RAB negotiates?

5 A Yes.

6 Q So that in prior years if the RAB had agreed to  
7 equal pay the BSL would have paid it also?

8 A That's correct.

9 Q Did Local 32J ever bargain for equal pay with the  
10 RAB before 1974?

11 A Well, even prior to 1974, since my association  
12 with the Union, it's always been our position, in our nego-  
13 tiations with the Realty Advisory Board that the cleaning  
14 women, members of 32J, were equally important to the opera-  
15 tion of the building as were the 32B male porters and we have  
16 always in our negotiations sought that they received the  
17 same rate of pay.

18 We were never able to accomplish that primarily  
19 for two reasons, because we could not financially sustain  
20 a city-wide strike, which would have been necessary to bring  
21 that result about, and number two, because unfortunately  
22 landlords and tenants can do without cleaning services for  
23 some length of time, we are not in the key position as would  
24 be an electrician or a carpenter or a plumber where the  
25 cessation of his duties would result in chaos within a day,

1 jke

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2 but we are in the position where the cessation of cleaning  
3 duties could be sustained by the landlord and the tenant  
4 for a considerable period of time without any undue hardship  
5 being placed upon the landlord or the tenant.

6 We have always felt that our female members were  
7 entitled to the same rate of pay as the male 32B porters,  
8 but for economic and strategic reasons we were never strong  
9 enough to achieve it.

10 Q Did you ever make it part of your negotiating  
11 demands with the RAB?

12 A Well, in our demands with the RAB, we always asked  
13 for what we thought was a sufficient wage increase to bring  
14 our people in line with the 32B rates of pay.

15 Q Do you mean by that equal pay with the 32B rates  
16 of pay?

17 A Yes.

18 Q You demanded equal pay with 32B?

19 A Well, we didn't use the term equal pay as such,  
20 but we always requested wage increases which in our opinion  
21 would bring our wages in line with 32B.

22 Q As a matter of fact, didn't 32J wages -- wasn't  
23 there almost a differential of approximately 50 cents  
24 between the 32J wages and the 32B wages?

25 A No. In prior years, the differential was much

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jke

Baumann - cross

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2

more than 50 cents.

3

Q How much more?

4

A Well, going back to 1950 --

5

THE COURT: Well, there was a differential.

6

Q There was a differential?

7

A Yes. We have been able to reduce the differential, even prior to --

9

Q By how much?

10

A Well, we reduced it from what it was previously down to 50 cents an hour prior to our present agreement with the RAB, in which we eliminated the differential.

13

Q I'm trying to get an idea.

14

In other words, was it a dollar difference, was it a 75 cent difference or --

16

A I can't. All I can tell you, it was in excess of 50 cents. Whether it was 75 cents or 80 cents or 85 cents, I can't tell you exactly, but I know the differential was greater because in the earlier years when I was first with the organization, we were never able to achieve even the same rate increase as the 32B porters. And only in 1966 were we able to achieve the same rate increase, but that still left us with approximately a 50 cent an hour differential.

25

Q Did you ever demand of the RAB that it give you,

1 jke

Baumann - cross

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2 give local 32J equal pay with Local 32B?

3 A I think I answered that question.

4 As such we never requested equal pay.

5 Q You testified that after you negotiated the job  
6 descriptions for Maintenance Cleaner I and Maintenance  
7 Cleaner II that you received complaints from women that  
8 they were being forced to do some jobs under the category of  
9 Maintenance Cleaner II, is that correct?

10 A That's correct.

11 Q Did the Union process any grievances about this?

12 A No. When we first received those -- well, I  
13 first assumed office as President and Business Manager of  
14 Local 32J in June of 1973, and prior to that time we had  
15 negotiated the Maintenance Cleaner I and Maintenance Cleaner  
16 II.category in the League agreement, and upon my assuming  
17 office, I ascertained that the employees were not living  
18 up to this Maintenance Cleaner I and Maintenance Cleaner II  
19 differentiation which was ligh cleaning on one side and  
20 heavy cleaning on the other, and there upon we made a demand  
21 upon the employers to reduce to specifics the duties of  
22 each of those classifications.23 And we entered into negotiations with the  
24 employers on that issue, I, personally, on or about June  
25 12 of 1973.

1 jke

Baumann - cross

2 Q I believe you testified that even after that  
3 you continued to receive some complaints, is that correct?

4 A Even after we had the Maintenance Cleaner I and  
5 Maintenance Cleaner II duties spelled out specifically in  
6 the agreement, we still continued to receive complaints.

7 Q Did you process any grievances at that time?

8 A At that time we determined that the most expen-  
9 ditious way in which we could achieve justice for our people  
10 and eliminate that problem would be by seeking equal pay for  
11 all our female members under the statute.

12 MS. PINZLER: One moment, please.

13 (Pause.)

14 Q Mr. Baumann, you testified, and several exhibits  
15 have been received of notices to your members, concerning  
16 the settlement of the lawsuit which were printed in five  
17 languages.

18 Were the original consents to sue in five  
19 languages also?

20 A I'm not sure what you mean by the original  
21 consents to sue.

22 Could you be more specific as to what document  
23 you are referring to?

24 A I believe it was marked as an exhibit.

25 THE COURT: Yes, I believe so also. Perhaps,

1 jke

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2 Mr. Shelton, you can help Miss Pinzler on this.

3 MR. SHELTON: I think you will find it as my

4 Exhibit 4, your Honor.

5 Q This consent form.

6 A Could you repeat the question again.

7 Q Was that also printed in five languages?

8 A It is not.

9 MR. SHELTON: Your Honor might want to know --  
10 your Honor, I just want to remind you, these had to be filed  
11 in Court. We have to have the English language when you file  
12 something in Court.

13 Q In addition to the English -- how many female  
14 members of Local 32 --

15 THE COURT: I'm not clear on this.

16 Can I see Exhibit 4, please?

17 MR. SHELTON: Sure, your Honor. Exhibit 4?

18 THE COURT: Yes, the one that was just referred  
19 to the witness.

20 MR. SHELTON: Yes.

21 Your Honor will recall the original of these  
22 were filed in Court with the complaints, and I take it that  
23 counsel is trying to get something out of the fact that they  
24 were not printed in English and Spanish --

25 THE COURT: I don't know what counsel is trying

1 jke Baumann - cross 117

to get at, Mr. Shelton. I would just like to know his

3                   Mr. Baumann, when this form was sent to whoever  
4                   it was sent to, was it sent only in English or was it also  
5                   sent in the other four languages which I gather you use for  
6                   the normal distribution of papers?

7 THE WITNESS: No, this form is only sent in  
8 English, your Honor.

9 THE COURT: All right.

10 MR. SHELTON: Your Honor, I'm not sure that the  
11 Union uses five languages for its normal distribution.  
12 Your Honor made that statement. I don't think that is cor-  
13 rect.

14 THE COURT: Perhaps my statement is incorrect.  
15 I think I have been advised that, at least on occasion, the  
16 Union sends out things in five different languages, is that  
17 correct?

18 THE WITNESS: When we sent to our members the  
19 settlement, the summary of the settlement agreement, which  
20 was in October 1974, it was in five languages, and the  
21 modification of that agreement, which was finally concluded  
22 with the Labor Department, which resulted in our finalizing  
23 our agreement with the RAB in December of 1975, the modifi-  
24 cations were sent out in January 1976 to all our members in  
25 five languages.

1 jke

Baumann - cross

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2                   Also the releases which we solicited from our  
3 members following the settlement of the first agreement was  
4 also -- the releases themselves were also in five languages.

5                   Q     How many of the female members of Local 32J signed  
6 these consents to sue?

7                   A     Approximately 6660, I believe.

8                   Q     Out of a total of approximately how many women  
9 members do you have again?

10                  A     Well, we have total female membership of approxi-  
11 mately 11,500.

12                  Q     Do you mean how many Allied female employees  
13 signed the consents to sue?

14                  A     Right offhand, I don't know.

15                  Q     If I were to tell you it was approximately 650  
16 does that sound right?

17                  MR. SHELTON: Objection, your Honor. The wit-  
18 ness has said he doesn't know.

19                  THE COURT: Sustained.

20                  MR. SHELTON: May I understand the reason for  
21 this inquiry? I really don't understand the relevance of  
22 it.

23                  MS. PINZLER: Your Honor, I believe that the  
24 thrust of Mr. Shelton's argument and Mr. Baumann's testi-  
25 mony on direct was that there was an identity of interests

1 jke

Baumann - cross

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2 between the members and the Union, and that at every step  
3 of the way there was wholehearted acceptance and agreement  
4 with what was going on, and I'm trying to -- in other words,  
5 what's good for the members is good for the Union, what's  
6 good for the Union is good for the members -- and I'm just  
7 trying to establish there may be some divergence in those  
8 interests at some point.

9 THE COURT: While we are on this subject, Miss  
10 Pinzler, I did ask you a little while ago to explain the  
11 relevance of these documents that I have received as Court's  
12 Exhibits.

13 You made a statement, and I still have a ques-  
14 tion in my mind. Relevance to what issue? What is the  
15 issue that those documents are directed to? What is the  
16 issue that this line of questioning is directed to?

17 MS. PINZLER: Those documents -- and the reason  
18 I haven't said too much about it is they will go to the  
19 question of the Union's possible liability for sex discrim-  
20 ination. The Equal Pay Act became effective --

21 THE COURT: That isn't a problem that we are  
22 concerned about this morning.

23 MS. PINZLER: Well, it's a problem on the con-  
24 flict, because I think that if the Union has possible  
25 liability for sex discrimination there is a divergence of

1 jke

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2 interest between its members and the Union, and that it  
3 becomes impossible for one law firm to represent both those  
4 interests.

5 THE COURT: I asked you two questions.

6 One, what was the relevance of those documents,  
7 and two, what is the relevance of this line of questioning?

8 Have you answered both questions?

9 MS. PINZLER: What I just said was on the ques-  
10 tion of the documents. I believe on the question of this  
11 line of questioning, it is to show a divergence between the  
12 interest of the Union and the interest of its members.

13 THE COURT: All right.

14 I'm not sure where we are. Is there a pending  
15 question?

16 MS. PINZLER: I don't know. I will put one.

17 THE COURT: All right.

18 Q Mr. Bauman, how many female members normally at-  
19 tend general membership meetings of the Union?

20 A Well, I'd have to ask you to differentiate  
21 between the normal general membership meetings, which we  
22 hold every month and the contract ratification meetings.

23 Q Okay.

24 A Can you be more specific as to which one you  
25 are talking about?

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

-----X

MARIA NURSE, et al., :  
Plaintiffs-Appellants, :  
DARLENE K. WILLIS, individually and on behalf of all others similarly situated, : AFFIDAVIT OF SERVICE  
Plaintiff-Intervenor, : 76-7062  
-against- :  
ALLIED MAINTENANCE CORPORATION, et al., :  
Defendants. :  
SHEA GOULD CLIMENKO KRAMER & CASEY, :  
Appellants. :  
-----X

STATE OF NEW YORK )  
                      ) SS.:  
COUNTY OF NEW YORK)

JOAN BERTIN LOWY being duly sworn deposes and says:

1. Deponent is not a party to this action, is over 18 years of age and resides in New York, New York.
2. On June 28, 1976 deponent served ~~two~~ <sup>one</sup> (1) copy ~~yes~~ JB  
of Motion of Plaintiff-Intervenor Darlene K. Willis for Leave to File a Brief and Appear as Amicus Curiae, two (2) copies of Brief Amicus Curiae of Plaintiff-Intervenor Darlene K. Willis, and one (1) copy of the Supplemental Appendix upon Shea Gould Climenko Kramer and Casey, attorneys for Plaintiff-Appellants in this action, at 330 Madison Avenue, New York, New York 10017

by mailing true copies of same United States first class postage  
post-paid.

  
JOAN BERTIN LOWY

Sworn to before me this  
28<sup>th</sup> day of June, 1976

  
Diana H. Greene  
Notary Public

DIANA H. GREENE  
Notary Public, State of New York  
File No. 10116  
Qualified in Bronx County  
Commission Expires March 30, 1977

STATE OF NEW YORK, COUNTY OF

ss.:

The undersigned, an attorney admitted to practice in the courts of New York State,

Check Applicable Box

Certification  
By Attorney

certifies that the within  
has been compared by the undersigned with the original and found to be a true and complete copy.

Attorney's  
Affirmation

shows: deponent is

the attorney(s) of record for

in the within action; deponent has read the foregoing  
and knows the contents thereof; the same is

true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief,  
and that as to those matters deponent believes it to be true. This verification is made by deponent and not by

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

The undersigned affirms that the foregoing statements are true, under the penalties of perjury.

Dated:

The name signed must be printed beneath

STATE OF NEW YORK, COUNTY OF

ss.:

Check Applicable Box

Individual  
Verification

the  
foregoing  
deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and as  
to those matters deponent believes it to be true.

Corporate  
Verification

the  
a  
foregoing  
is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and  
belief, and as to those matters deponent believes it to be true. This verification is made by deponent because  
is a corporation and deponent is an officer thereof.

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

Sworn to before me on

19

The name signed must be printed beneath

STATE OF NEW YORK, COUNTY OF

ss.:

is over 18 years of age and resides at

being duly sworn, deposes and says: deponent is not a party to the action.

Check Applicable Box

Affidavit  
of Service  
By Mail

On  
upon  
attorney(s) for

19

deponent served the within

in this action, at

the address designated by said attorney(s) for that purpose  
by depositing a true copy of same enclosed in a post-paid properly addressed wrapper, in — a post office — official  
depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Affidavit  
of Personal  
Service

On  
deponent served the within

19

at

upon

the

herein, by delivering a true copy thereof to — h — personally. Deponent knew the  
person so served to be the person mentioned and described in said papers as the

Sworn to before me on

19

The name signed must be printed beneath

NOTICE OF ENTRY

Sir:—Please take notice that the within is a (certified) true copy of a  
duly entered in the office of the clerk of the within named court on

19

Dated,

Yours, etc.,

Attorney for

Office and Post Office Address

To

Attorney(s) for

NOTICE OF SETTLEMENT

Sir:—Please take notice that an order

of which the within is a true copy will be presented for settlement to the Hon.

one of the judges of the within named Court, at

on the              day of              19  
at                    M.

Dated,

Yours, etc.,

Attorney for

Office and Post Office Address

To

Attorney(s) for

Index No. 76-7062

Year 19

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

MARIA NURSE, et al.,

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-against-

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Defendants.

SHEA GOULD CLIMENTKO KRAMER & CASEY  
Appellants.

AFFIDAVIT OF SERVICE

JOAN BERTIN LOWY, ISABELLE MATZ PINZLER,  
DIANA H. GREENE & ROBERT P. ROBERTS,

Attorneys for PLAINTIFF-INTERVENOR

Office and Post Office Address, Telephone  
National Employment Law Project, Inc.  
423 West 118th Street  
New York, N. Y. 10027  
(212) 566-8591

To

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated,

Attorney(s) for